SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 56

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

THE UNITED STATES OF AMERICA, EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[Caption omitted.]

In Supreme Court of the District of Columbia as a District Court of the United States

At Law

No. 76382

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and for mandamus

Feb. 18, 1929

The petition of the United States in relation of The Vindicator Consolidated Gold Mining Company respectfully represents:

I. The relator, The Vindicator Consolidated Gold Mining Company, is a corporation duly and legally organized and existing under the laws of the State of Colorado, a citizen of the State of Colorado residing in the county of Denver in said State, and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of relator's claim under the act hereinafter named and against Roy O. West, a citizen of the State of Illinois, officially residing in the District of Columbia.

II. That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A Bill to Amend Section 5 of an Act Approved March 2, 1919, known as the War Minerals Act", approved February 15th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III. The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of the said act as amended was and is authorized to adjust, liquidate, and pay the losses suffered by any firm, person, or corporation by reason of producing or preparing to produce chrome in compliance with the request or demand of the Department of the Interior when such production was to supply the urgent needs of the Nation in the prosecution of the war.

IV. The Vindicator Consolidated Gold Mining Company, between the dates of the 6th of April, 1917, and the 11th day of November,

1918, in preparing to produce and in producing chrome in compliance with the request of the Department of the Interior to supply the urgent needs of the Nation expended and incurred obligations in good faith for and upon property containing chrome in sufficient quantities to be of commercial importance.

V. As authorized by said act of March 2, 1919, section 5, The Vindicator Consolidated Gold Mining Company, on May 31st, 1919, filed its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained chrome as described in section 5 of said act.

VI. In the said petition or claim filed as aforesaid this relator as part of said expenditures and obligations claimed $16,259.00, as an expenditure for the purchase of property.

VII. That hearings were held before the agencies established by the Department of the Interior for that purpose and an award was made and subsequent rehearing asked and obtained and to wit: On the 15th day of May, 1922, the Secretary of the Interior then in office definitely and specifically denied relator an award for said item of loss and said "that such item was properly rejected, that it clearly represented the payment for property, and was not reimbursable under the law."

VIII. That it is true as was demonstrated by undisputed evidence that relator expended monies for the purchase of property and such item constituted a net loss to relator and the same was denied for the sole reason that the Secretary of the Interior held as a matter of law that such loss was not included within the provisions of said act.

IX. Thereafter, the Congress of the United States by the act hereinbefore described, approved February 13th, 1925, gave jurisdiction to this court to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2, 1919, and amendments thereto.

X. In this case the present Secretary of the Interior, respondent herein, has refused to reopen the decisions of his predecessors in office and there has been a final decision of the Secretary of the Interior based upon the question of law for it is not disputed that relator paid and lost monies in the purchase of property and in that it is claimed by respondent as a matter of law such loss is not reimbursable under the law.

XI. That the respondent and his predecessors in office erred as a matter of law in not finding that said sum lost as aforesaid by relator is such a loss as was allowable under said act of March 2, 1919, as amended.

XII. Wherefore, petitioner, on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for purchase of property.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made in the purchase of property as hereinbefore set forth and to allow such sum as may be just and equitable therefor, and to adjust and pay relator's net losses in the purchase of property.

3. That such other order or orders be entered as this court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,
By NELSON FRANKLIN, *Vice President.*

[*Duly sworn to by Nelson Franklin; jurat omitted in printing.*]

In Supreme Court of the District of Columbia, as a District Court of the United States

[Title omitted.]

Motion for substitution.

Filed Mar. 15, 1929

In the above-styled cause relator respectfully shows to the court that the respondent, the honorable Roy O. West, has ceased to hold the office of Secretary of the Interior and that that office is now held by the honorable Ray Lyman Wilbur; that there is a substantial need for continuing and maintaining the above-styled cause and for obtaining an adjudication of the questions therein involved.

Wherefore, within six (6) months after the termination of the service in the office of Secretary of the Interior of the honorable Roy O. West, relator moves that this cause be permitted to continue and be maintained against his successor in office, the honorable Ray Lyman Wilbur.

EDGAR WATKINS,
Attorney for Relator.

Receipt of copy acknowledged this Mch. 11, 1929.

O. H. GRAVES,
Atty. for Defts.

In Supreme Court of District of Columbia

Order substituting party respondent

Notice of the foregoing motion having been given, and the honorable Ray Lyman Wilbur, Secretary of the Interior, consenting thereto, it is ordered that Ray Lyman Wilbur, as Secretary of the Interior, be, and he is hereby, substituted for the respondent Roy O. West, and this cause be permitted to be continued and maintained against Ray Lyman Wilbur as successor in office of respondent Roy O. West.

WENDELL P. STAFFORD,
Judge.

In Supreme Court of the District of Columbia

[Title omitted.]

Response to the rule to show cause.

Filed Mar. 15, 1929

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause issued herein, suggests to the court that the petition for review presents the sole and only question finally determined by the Secretary of the Interior in connection with petitioner's claim for losses sustained under section 5 of
7 the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended, to wit, whether or not one who was engaged in producing or preparing to produce chrome and sustained a net loss by reason of expenditures for the purchase of property, to wit, the property upon which the mine was located, is entitled to have such loss reimbursed under the provisions of said act.

This question the Secretary decided in the negative, as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D, E, and F, attached hereto and made a part hereof.

Under the act of February 13, 1929, Public, No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question of the purchase of property as aforesaid, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.

By E. C. FINNEY,
Solicitor, Interior Department.

O. B. GRAVES,
Assistant to the Solicitor.

Attorney General.

Ex. A to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 12, 1921.

Claim No. 746

In the matter of the claim of the Vindicator Consolidated Gold Mining Company, Denver, Colorado. Chrome.

The honorable the SECRETARY OF THE INTERIOR.

DEAR SIR: This is a claim for alleged losses sustained in producing chrome from two properties, one of which, known as the Deer Creek mine, was located 23 miles southwesterly from Glen Rock, Wyoming, and the other, known as the Froom tract, located in San Luis Obispo County, California.

The Deer Creek mine was purchased by the claimants and the Froom tract was leased. The engineers who examined these properties have reported that in their opinion they were of commercial importance during the war period.

Section 5 of the act under which this claim is filed provides as follows:

"That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation by reason of producing or preparing to produce either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war."

This claim was rejected on October 16, 1920, but the claimants have since shown that the California property was visited on June 21, 1918, by Mr. E. L. Young, of the Bureau of Mines, who requested them to produce as much chrome as possible. The superintendent of the California mine immediately transmitted this information to the claimant company at Denver. July 1 was therefore fixed as the date on which audits of the claim should be made.

The following statement, taken from the auditor's accounts, shows a loss on each property between July 1, 1918, and November 12, 1918.

Deer Creek property, July 1, 1918, to November 12, 1918

Labor	$8,607.59
Supplies	2,215.81
[illegible]	2,472.79
[illegible]	978.61
[illegible]	170.39
[illegible] equipment	704.28
[illegible]	3,253.35
[illegible] expense	166.75
[illegible]	2,650.50
Operating	[illegible]

Miscellaneous:		
Property	16,259.00	
Personal & traveling	616.16	
Engineers	609.25	
Legal	300.00	
Salaries	86.65	
Interest	74.48	
Total misc		$17,895.54
Total expenditures		38,254.80
Disallowed:		
Property	16,259.00	
Engineers	609.25	
Legal	300.00	
Interest	74.48	
		17,242.73
Allowable expense to Nov. 12, 1918		$21,012.07
Credits:		
261 tons ore—being 65% of 400 tons as estimated by Mr. Francklin	11,325.14	
Salvage as per engineer's report	2,033.79	
		$13,358.93
Loss		$7,653.14
Allowance for sorting and hoisting 261 tons ore @ $3 per ton		783.00
Total		$8,436.14
Allowance as royalty to cover depletion on property—10% of ore sales		1,132.51
		$9,568.65

California property, July 1, 1918, to November 12, 1918

Labor	3,125.96	
Supplies	492.28	
Lumber	147.77	
Explosives	62.55	
Assaying	27.00	
Tools	3.75	
Equipment	769.50	
General expense	22.53	
Ore purchased	102.50	
Hauling	196.14	
Total operation		4,959.99
Miscellaneous:		
Personal & traveling		106.22
		5,066.21
Credits:		
Sale of equipment	444.00	
Car ore sold	1,299.04	
		1,743.04
Allowance made for royalty on car ore sold		197.22
		$3,520.39
Summary:		
Loss Deer Creek property		$ [illegible]
" California		[illegible]
Total		13,089.04

Claimants purchased the Deer Creek property and paid thereon $16,259.00. This amount has been disallowed.

The war minerals relief act does not contemplate reimbursement for moneys paid for purchase of mining properties. Provision for

such losses was stricken from the measure when it was being considered by the Senate.

In the Senate on January 28, 1919, a distinguished Senator objected to the provision which was then carried in the legislation and said:

"I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing'?"

The Senator in charge of the measure answered: "I will consent to that, Mr. Chairman."

The measure as it ultimately became a law did not contain the words "or acquiring property for producing."

It is accordingly recommended that an award of $13,089.04 be made.

(Signed) JOHN F. SHAFROTH,
" PHILIP N. MOORE,
" HORACE G. POMEROY,
Commissioners.

Ex. B to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 19, 1921.

Claim No. 746

In the matter of the claim of the Vindicator Consolidated Gold Mining Company, 603 Symmes Bldg., Denver, Colorado. Property, Converse Co., Wyoming. Chrome

The honorable the SECRETARY OF THE INTERIOR.

DEAR SIR: On February 12, 1921, the commission recommended an award in this claim in the amount of $13,089.04.

Mr. Nelson Franklin, vice president of the claimant company, has since asked for additional allowance covering several items as set forth in his letter of February 16, 1921. After a personal interview with Mr. Franklin, and a reconsideration of the items, the commission desires to recommend an additional allowance in the items covering the charge for engineering work, and to reduce the amount taken for salvage of ore on hand from November 12, 1918, in the Wyoming operation.

In the California operation a deduction of $1,299.04 was made for a car of chrome ore which was sold. The commission finds that only four tons of this ore was mined after stimulation, therefore the deduction of the entire car was in error. With the corrections above noted, the statement of allowable losses will take the following form:

Deer Creek, Wyoming, property, July 1, 1918, to Nov. 12, 1918

Total expenditures (see original recommendation for details)		$38,264.80
Less hauling on 33 tons @ $9.00		297.00
		$37,967.80
Deductions:		
Property	$16,250.00	
Engineers (L. S. Noble)	121.75	
Legal	300.00	
Interest	74.48	
		16,746.23
Allowable expenditures to November 12, 1918		$21,221.57
Credits:		
Ore sales, 228 tons @ $43.40	$9,895.20	
Salvage eng.'s estimate	2,083.79	
		11,978.99
		$9,242.58
18 Allowance for sorting and hoisting 228 tons @ $3.00		684.00
		8,957.58
Allowance for royalty to cover depletion of property 10% of ore sales		989.52
		$10,947.10

California property, July 1, 1918, to Nov. 12, 1918

Total operation		$4,959.99
Less hauling of ore mined before stimulation		176.00
Total operating		4,783.99
Personal and traveling		106.22
		4,890.21
Credits:		
Sale of equipment	$444.00	
4 tons ore sold @ $40	160.00	
		604.00
		$4,286.21
Allowance for royalty, 4 tons @ $6		24.00
		$4,310.21
Less Deer Creek property		$10,947.10
California		4,310.21
		$6,636.89

The commission accordingly recommends an award of $6,636.89.

(Signed) Louis F. Seaborn,
Commissioner.
Royden B. Moore,
Commissioner.
Alexander G. Penrose,
Commissioner.

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Ex. C to response to rule

Copy

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, February 24, 1921.

Claim No. 746

In re The Vindicator Consolidated Gold Mining Co.

The above is a claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274). The law authorizes compensation for losses incurred in the production of chrome during the war due to stimulation by the Government.

Here there was such stimulation. I have considered the record and an award of $15,257.31 is made as recommended by the War Minerals Relief Commission.

(Sgd.) PAYNE.

Ex. D to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, April 14, 1922.

Claim No. 746

Vindicator Consolidated Gold Mining Company, Denver, Colorado

MEMORANDUM IN REVIEW OF

February 24, 1921, Secretary Payne, on the recommendation of the former commission, awarded and paid to this claimant $15,257.31. Claimant filed a motion for rehearing under the amended act and upon request was permitted to present orally his objections to the award.

At the oral hearing it was agreed that there was but one question to be decided in this review, namely, whether the deduction which the former commission made for the purchase of property was proper; whether the expenditure in question was, in fact, for the purchase of the mining land.

July 15, 1918, claimant took a lease and bond on the property, the terms of which were that claimant was to pay a royalty of 12½ cents a ton for all the ore extracted and sold, and at the end of one year was to pay a purchase price of $60,000.00. On October 30, 1918, claimant paid $6,750.00 as advance royalty and at the same time, by instrument, as is admitted, secured full title to the property which title is still in claimant. Claimant now contends that the $6,750.00

should be regarded as advanced royalty and not as a property purchase.

The matter is so clear to me that I shall make little comment upon it. If the money was paid as royalty and not as purchase money, how is it that by its payment claimant secured title to the property? The taking of title without reservation establishes the character of the transaction beyond question.

I have no doubt whatsoever that the former commission was right in holding this to be purchase of property and not an allowable item.

The claim should be denied.

(Signed) IRA E. ROBINSON,
Commissioner.

Ex. E to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, May 16, 1922.

W. 45. Claim No. 746. War minerals relief act. Affirmed

The Vindicator Consolidated Gold Mining Company

Appeal from the War Minerals Relief Commissioner

This claim arising under section 5 of the act of March 2, 1919 (40 Stat. 1274), is for losses sustained in producing chrome from two properties, one known as the Deer Creek mine in Converse County, Wyoming, the other located on the Froom tract in San Luis Obispo County, California.

16 After full consideration of the case the original War Minerals Relief Commission, under date of February 19, 1921, recommended an award in the sum of $15,247.31. Included in the expenditures disallowed was the sum of $10,250, representing an outlay of $7,500 for a lease of the Deer Creek mine and $2,750 subsequently paid for the title to the mine and property.

Under date of February 19, 1921, the company agreed in writing "to accept the amount recommended as full and complete payment of all the claims of the Vindicator Consolidated Gold Mining Company against the United States under the provisions of section 5 of the [illegible] Congress of March 2, 1919, reserving the right of appeal in case of [illegible] allowing the above section." The award was thereafter approved by Secretary Payne, certified for payment, and [illegible] the reopening of the claim [illegible] November 23, 1921 (Public No. 30, [illegible] for the act of March 2, 1919, [illegible] the item of $10,250, [illegible] the purchase price of [illegible] was erroneously disallowed.

The War Minerals Relief Commission thereupon reviewed the record and held, under date of April 10, 1920, that the item was properly rejected; that it clearly represented a payment for property and was not reimbursable under the law.

Upon appeal it is contended that the aforesaid sum of $2,500 represents an expenditure made by the claimant July 15, 1918, for prior development upon the property whereby a body of ore was disclosed which by measurement and analysis showed a net value at the then price of ore far in excess of the amount paid. And that the sum of $8,759 represents a payment made by claimant to the owner of the property October 25, 1918, before any shipments could be made therefrom and was paid after long negotiations between the claimant and the owner as royalty in advance and was accepted by the owner as full settlement of all further royalties which claimant would have been obligated to pay under the terms of the lease.

17 The record has been examined, and the facts in this regard appear to be as follows: Mr. Wood, then president of the Vindicator Consolidated Gold Mining Company, personally undertook and financed the operation on the Deer Creek property in July, 1918, obtaining a lease on a royalty basis, with an option or agreement of purchase at the end of one year for the sum of $25,000. In September, 1918, the Vindicator Company took over the mine and property, reimbursing Mr. Wood's expenditures. The payments made upon the lease and purchase price of the mine by Mr. Wood and his successor in interest are shown to be as follows:

Payment by Wood July 15, 1918	$2,500
Payment by Wood September 11, 1918	2,500
Payment by V. C. G. M. Co. October 11, 1918	2,500
Payment by V. C. G. M. Co. October 23, 1918	8759
Total payment on purchase price of mine	16,259

The answered questionnaire in connection with this claim for the Deer Creek operations reports expenditures in the sum of $16,259 under the heading "Purchase of lease and title to property," and at the hearing before the War Minerals Relief Commission held in Denver, Colorado, in August, 1919, Mr. Nelson Franklin, general manager for the Vindicator Company testified with respect thereto as follows:

Mr. FRANKLIN. The purchase of the mine, we paid $7,500 for the lease on the property, and paid $8,760 for the mine, that has all been paid.

Chairman SHARROTH. That is in addition to the $7,500?

Mr. FRANKLIN. $8,760?

Chairman SHARROTH. Yes, sir.

Mr. FRANKLIN. Yes, sir; we own the property.

Commissioner FOSTER. Fee simple?

Mr. FRANKLIN. Fee simple, yes, sir; it is patented property; we first bought the lease and bond and afterwards bought the property, from the owners, a couple of months subsequent.

Chairman SHAFROTH. And the total of these two is what?

18 Mr. FRANKLIN. $16,250, with $19 recording expense, which made $16,269, which we have charged up to cost of property.

In the light of the foregoing it is abundantly clear that the expenditure in question was made to obtain a transfer of property and mining rights. Such expenditures are not reimbursable under the law, and no further award will be made.

(Signed) E. C. FINNEY,
Acting Secretary.

Ex. F to response to rule

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, September 22, 1922.

W 45. Claim No. 746. War minerals relief act

The Vindicator Consolidated Gold Mining Company

On reconsideration

The sole question involved in this case is whether an expenditure of $16,269 which was disallowed by the former War Minerals Relief Commission because for the purchase of property known as the Deer Creek mine, and upon rehearing disallowed by Commissioner Robinson for the same reason, should be treated and regarded in its entirety as purchase money, or in part as advanced royalties.

It is clear beyond question that the expenditure aforesaid represents the purchase price of the mine. It was so stated in claimant's accounts and it was freely admitted in the hearing that in consideration of this payment fee title to the property was transferred. In this connection the record shows that in July, 1918, Mr. G. S. Wood, then president of the Vindicator Consolidated Gold Mining Company, began this chrome operation on his own account, obtaining a lease and bond which called for a payment of 12½% of the value of all ore shipped from the mine until said royalty in the aggregate reached $25,000, presumably to be obtained in a year's time, when full title to the property was to be conveyed to the lessee.

19 Mr. Wood started work on the property in July, 1918, repairing and building roads, constructing a tramway, and making various camp improvements. The amount spent up to September 18, 1918, when the operation was taken over by the Vindicator Company, was $13,743.80, as shown by the engineer's and auditor's reports. Of this amount, $5,000 was actual "property account," representing payments on the lease. The balance was operating cost on the mine, development and some miscellaneous expenses, such as traveling and engineering and legal fees.

As above stated, the operation was taken over by the Vindicator Company September 18, said company reimbursing Mr. Wood's ex-

penditures and claiming, according to its own statement, all liabilities, including the balance due on the purchase price of the property. Payments made upon the purchase price of the mine by Mr. Wood and the Vindicator Company are shown to be as follows:

Payment by Wood July 15, 1918	$2,500
Payment by Wood September 11, 1918	2,500
Payment by the V. C. G. M. Co. October 11, 1918	2,500
Payment by the V. C. G. M. Co. October 28, 1918	3,750
Total	$11,250

In adjusting the claim the original commission fixed stimulation as of July 1, 1918, covering the period of Mr. Wood's operation, and gave the claimant company credit for expenditures incurred upon the mine by the former lessee on account of labor, supplies, equipment, etc., as follows:

Labor	$5,181.58
Supplies	624.20
Lumber	418.60
Explosives	137.
Tools	97.10
Camp equipment	474.15
Equipment	1,776.60
General expenses	24.22
Personal and travel	150.20
Total	$8,881.65

20 No ore had been shipped at the time of the armistice, but it is shown that a considerable quantity was on hand, and it appears that 228 tons were salvaged at $43.40 per ton. A royalty allowance of 10% was made to cover depletion of property.

The acquisition of title to the property establishes the character of the transaction beyond question and the contention that the amount in question was paid as advance royalties does not and can not in any degree alter the fact that it was paid to secure a transfer of property and mining rights.

Expenditures of this character are not reimbursable under the law.

(Signed) E. C. Finney,
First Assistant Secretary.

In Supreme Court of the District of Columbia.

[Title omitted.]

Demurrer.

Filed Mar. 15, 1929.

Comes now the relator by its attorney and says that the answer of respondent to the rule to show cause and to the petition herein is bad in substance.

Note—Points to be argued.

1. That as shown by the answer and response and the undisputed allegation of the verified petition herein, relator suffered net losses

from payments made for the purchase of property used in producing chrome; that relator in making such and other expenditures complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses. That from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2, 1919, and acts amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law here involved and to enter such orders herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 15th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Stipulation

Filed Sep. 24, 1929.

It is hereby stipulated and agreed by and between counsel for the above named parties—

(1) That the submission of this cause heretofore made upon the petition and response be withdrawn.

(2) That the response be withdrawn and stricken from the record.

(3) That the uncertified copies of the findings of the Secretary of the Interior, the War Minerals Relief Commission, and the Commissioner of the War Minerals, attached to the response filed herewith, be considered by the court in connection with this case with the same effect as though they were the originals.

(4) That the respondent be permitted to file and serve answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

(5) That petitioner rely upon the briefs heretofore filed in this cause and filed herewith a short statement to which respondent has the right to reply at any time within ten days.

(6) That thereupon this cause be and the same hereby is resubmitted to the court for final consideration upon the petition, answer, and demurrer.

Dated September 2, 1929.

EDGAR WARNER,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Order on stipulation.

Filed Sep. 24, 1929

In accordance with the stipulation of counsel for the respective parties to this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the submission of this case to the court upon petition and response, heretofore made, be and the same hereby is withdrawn.

2. That the respondent's response to the relator's petition heretofore filed in this case be, and the same hereby is, deemed to have been withdrawn by the respondent, and the same hereby is stricken from the record.

3. That the respondent be, and he hereby is, permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response, which is now on file, be permitted to stand and be considered as a demurrer to such answer.

4. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Commissioner of War Minerals, which are attached to the answer of the respondent which is to be filed as aforesaid, may be considered by the court in its consideration of this case with the same effect as though they were original papers.

5. That this case now be considered as having been resubmitted to the court for final consideration upon the petition, answer, and demurrer, and upon the briefs heretofore filed by the parties thereto, and upon the supplemental brief now filed by the relator.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of the District of Columbia

[Title omitted.]

Respondent's answer to the petition

Filed Sep. 24, 1929

The respondent, Ray Lyman Wilbur, for answer to the petition in this case, says:

1. The respondent admits that the allegations of the first paragraph of the petition were correct at the time the petition was filed, except that the question raised by the petition might have been decided by the Secretary of the Interior adversely to the petitioner's contention by the facts in the case.

2. The respondent admits that the allegations of the second paragraph of the petition were substantially correct at the time the petition was filed. The respondent says, however, that the correct title of the act approved February 15, 1929, is "An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended."

The respondent says that since the filing of the petition in this case Edy O. Weir has ceased to be the Secretary of the Department of the Interior and that the respondent, Ray Lyman Wilbur, now is the Secretary of the Interior.

3–6. The respondent admits the allegations of the third, fourth, fifth, and sixth paragraphs of the petition.

7. The respondent admits the allegations of the seventh paragraph of the petition, except that he says that the language quoted therein had reference to a recommendation of the War Minerals Relief Commission, as appears from the following exact quotation from the decision of the Secretary: "The War Minerals Relief Commission reviewed the record and filed under date of April [illegible] that the [illegible] properly reported that it cannot be allowed [illegible] and was not recommendable under the law." Upon review and after full consideration of the claimed [illegible] in his opinion of May 16, 1928, held with [illegible] the War Minerals Relief Commission [illegible] and he rendered a decision similar to [illegible]

8. The respondent denies the allegations of the eighth paragraph of the petition. His denial in this respect is explained fully in the last paragraph of this answer.

9. The respondent denies the allegations of the ninth paragraph of the petition. He says that his denial in this respect is explained fully in the last paragraph of this answer.

The respondent says further that the act of March 2, 1919, did not contemplate reimbursement for amounts paid for the purchase of said property, even if the land contained the ores of the minerals specified in that act and that a loss sustained in that way was not within the purview of the act. It is claimed herein that money was paid for relation to the purchase of property, and if the court holds that losses were suffered thereby and are allowable in cases where claims are filed under the statute these will be subsequently determined by the Secretary of the Interior.

The respondent says that the provisions of the act of March 2, 1919, were intended for the guidance of the Secretary of the Interior, who was charged with the administration of its provisions, and that, therefore, it was necessary for the Secretary to construe the various provisions of the act in order that he might carry them into effect. The respondent says that the various Secretaries of the Interior in administering the act of March 2, 1919, including this respondent, have construed the provision of the act reading, "that the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered," as applying only to losses actually suffered at the date of the passage of [illegible] the act, whose amounts were or could be ascertained at that date and were capable of proof beyond any element of speculation.

The respondent says further that the said Secretaries of the Interior, including himself, have held that where title to real estate purchased by claimant was held by him at the date of the passage of the act of March 2, 1919, there was no loss existing at that date for which compensation could be made within the terms of the act.

The respondent says further that the said Secretaries of the Interior, including himself, have held that in any event losses sustained through investments in real estate, even if the land contained the ores of the minerals specified in the act of March 2, 1919, were not losses for which compensation could be made within the terms of that act.

The respondent says that the constructions placed upon the act, as aforesaid, were not unreasonable and that they were and are justified by the language of the act itself. The respondent says that in making said constructions upon the act of March 2, 1919, [illegible] Secretaries of the Interior, including himself, acted within the scope of their authority and in the exercise of their [illegible] and that the constructions [illegible] contrary, or opposed [illegible] by the courts as correct. [illegible] that any error of law [illegible] Interior in the adjudication [illegible] and that, therefore, [illegible] reimbursement [illegible] known as the Deer Creek [illegible] respondent being

based upon his finding that no such [illegible] was [illegible] matter of fact, is not subject to review under the [illegible] of February 13, 1929, pursuant to which the petition in the instant case was filed.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior,
By JOS. M. DIXON,
Acting Secretary of the Interior.

28 [*Duly sworn to by Jos. M. Dixon; jurat omitted in printing.*]

Memorandum re exhibits

Exhibits filed with answer same as those filed with response to the rule to show cause.

In Supreme Court of the District of Columbia

At law

No. 76362

THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY
vs.
RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Final judgment

Filed Mar. 7, 1930

This cause came on to be heard on the petition of The Vindicator Consolidated Gold Mining Company for review and mandamus, and upon the answer of the respondent and the demurrer of petitioner, and upon the stipulation of the parties and the order of this court approving such stipulation, entered on the 24th of September, 1929, which order and stipulation, submitted to the court for final consideration upon the petition, answer, and demurrer the issues made thereby.

Now, on this March 7, 1930, ordered, adjudged, and decreed that the petition of The Vindicator Consolidated Gold Mining Company for review and mandamus is denied, and it is

29 ordered and decreed that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior, and the petition for review and mandamus are dismissed.

By the court:

WENDELL P. STAFFORD,
Justice.

From the foregoing judgment The Vindicator Consolidated Gold Mining Company, petitioner, in open court, notes an appeal to the

Court of Appeals of the District of Columbia, which is allowed, and the undersigned, who will act upon said appeal, is fixed in the sum of [illegible] dollars, with leave to deposit the sum of fifty dollars with the clerk in lieu thereof.

By the court,

WENDELL P. STAFFORD,
Justice.

Consent as to form:

O. H. GRAVES,
Atty for Defts.

EDGAR WATKINS,
Attorney for The Vindicator Consolidated Gold Mining Company.

Memorandum re bond

March 7, 1930.—$50 deposited in lieu of bond on appeal

In Supreme Court of the District of Columbia

[Title omitted.]

Assignment of errors

Filed Mar. 7, 1930

The appellant, The Vindicator Consolidated Gold Mining Company, assigns the following errors in the ruling of the court.

The court erred:

1. In refusing to hold and to direct the respondent to hold that an investment in real estate for the purposes provided for under the act of March 2, 1919, and amendments thereto was a loss when such investment was lost, respondent having admitted that it was the holding of himself and predecessor Secretaries of the Interior that such a loss was not a loss for which compensation could be made within the terms of the act aforesaid.

2. In refusing on the admitted fact to adjudge and decree that appellant's loss from an investment in real estate was such a loss as constituted a net loss under section 5 of the act of March 2, 1919, and its amendments, that being the act relied upon by appellant in his petition herein.

3. In refusing to direct the respondent to make an award to appellant, respondent having admitted that appellant purchased property which was an expenditure of money, and the law requiring the repayment of the net loss from such purpose.

4. In refusing to direct the Secretary, regardless of whether or not [illegible] and their value lost had been sold, to enter an award for net losses suffered and admittedly suffered by respondent.

5. In refusing to enter a final decree directing respondent-appellee to take jurisdiction of the claim of appellant and determine the amount of

not lessen the penalties of said [illegible] the purposes stated in the act when the record also shows [illegible] been suffered by reason of such purpose.

6. In denying appellant relief on its petition herein [illegible]

[illegible]

Counsel for Appellant.

In Supreme Court of the District of Columbia.

[Title omitted.]

Designation of the record.

Filed Mar. 7, 1930

The clerk will please prepare the transcript of record on the appeal of The Vindicator Consolidated Gold Mining Company, including therein the following parts of the record:

1. Petition for review and mandamus.
2. The petition for an order substituting Ray Lyman Wilbur as respondent.
3. The original response to the rule to show cause, with the exhibits thereto attached.
4. The demurrer filed by The Vindicator Consolidated Gold Mining Company.
5. Stipulation of the parties hereto, dated September 2, 1929.
6. Order of the court on said stipulation, dated September 24, 1929.
7. Respondent's answer to the petition for mandamus, omitting exhibits copied with paragraph 3 above.
8. Final decree denying relief and dismissing the petition for review and mandamus.
9. Memorandum as to approval and filing of bond on appeal of The Vindicator Consolidated Gold Mining Company.
10. Assignment of errors on appeal of The Vindicator Consolidated Gold Mining Company.
11. This designation of transcript of record and the acceptance of service thereon.

Edgar Wat[illegible]

Counsel for Appellant,

The Vindicator Consolidated Gold Mining Company.

32

Acknowledgment of service.

Notice is hereby accepted of the application for an allowance of the appeal in this cause; receipt is hereby acknowledged of a copy of appellant's assignment of errors and of the designation of record on appeal. All other and further notice and service is acknowledged.

[illegible]

Solicitor for Ray Lyman Wilbur,

Secretary of the Interior.

[Clerk's certificate to foregoing transcript omitted in printing.]

32 In Court of Appeals of the District of Columbia

[Title omitted.]

Minute entry of submission—Oct. 9, 1930

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Messrs. Edgar Watkins and J. C. Trimble, attorneys for the appellant, and by Messrs. O. H. Graves and Victor H. Wallace, attorneys for the appellee. The appellant is allowed to file a supplemental brief, with leave to appellee to reply.

34 In Court of Appeals of the District of Columbia

THE UNITED STATES OF AMERICA, *ex rel.* THE VINDICATOR Consolidated Gold Mining Company, a Corporation, appellant

v.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR

No. 5195.

Before MARTIN, Chief Justice; ROBB, Associate Justice; and WHEAT, Chief Justice of the Supreme Court of the District of Columbia

Opinion

Filed Feb. 2, 1931

Mr. Justice WHEAT delivered the opinion of the court:

This is an appeal from a judgment of the Supreme Court of the District, dismissing a petition of the appellant which sought a review, pursuant to the act of February 18, 1929 (c. 182, 45 Stat. 1166), of the decision of the Secretary of the Interior in rejecting in part a claim filed under section 5 of the act of March 2, 1919 (c. 94, 40 Stat. 1272, 1274), commonly called the war minerals relief act.

The statutory provisions are the same as those involved in the case of Crimora Manganese Corporation v. Wilbur, Secretary, decided this day.

The case was submitted to the court below upon petition and answer, from which the following facts appear:

Between the 6th of April, 1917, and the 11th of November, 1918, in preparing to produce and in producing chrome, in compliance with the requests of the Department of the Interior, The Vindicator Consolidated Gold Mining Company, hereinafter referred to as The Vindicator Company, expended and incurred obligations

35 for and upon property containing chrome in sufficient quantities to be of commercial importance. It filed its claim with the Secretary of the Interior, seeking an award for its net losses,

and allowed as part thereof the cost of the ore as an expenditure for the purchase of the property. The Secretary made an award but specifically denied anything for that item of loss. The petition alleges that the moneys expended for the purchase of the property constituted a net loss. After categorically denying that allegation, the Secretary in his answer says: "That the denial of this respect is explained fully in the last paragraph of this answer." [illegible]

In the last paragraph of the answer the explanation made of the denial is in substance that it appeared that the petitioner still retains the fee simple title to the real property which it previously had purchased, known as the Deer Creek mine; that where real property was purchased in fee simple, no loss was suffered by the purchaser because of payment of the purchase price so long as he retained the title for which he had paid; that under such circumstances it necessarily appeared as a matter of fact that petitioner had suffered no loss by reason of the money expended for the title; that the act of March 2, 1919, did not contemplate reimbursement for amounts paid for the purchase of real property and that a loss sustained in that way was not within the purview of the act. The answer also states:

"It is admitted herein that money was paid by relator in the purchase of property, and if the court holds that losses were sustained thereby and are allowable in cases where claimant retains title, the amount thereof will be subsequently determined by the Secretary of the Interior."

36 It is apparent, therefore, that the denial of the allegation that the amount paid by the petitioner for the property constituted a net loss, coupled with the explanation, raises an issue of law, not of fact. That is, the Secretary, without examining the facts, held as a matter of law that no loss could be suffered, within the meaning of the act, by one who had bought property and still retained title thereto. That is the sole question presented for our consideration, and the pleadings were obviously drawn for the purpose of raising it squarely and obtaining a decision thereon.

This question was considered by this court in the case of Work v. United States ex rel. Rives (54 App. D. C. 84). In that case it appeared that Rives, a claimant under the act, had agreed to buy two tracts of manganese land and had made an initial payment of $2,600 on the purchase price. On Armistice Day there was due on the purchase price the further sum of $11,000, but since the demand for manganese had ceased the land was not worth more than $1,000. To save himself further loss, Rives elected under his contract to [illegible] as liquidated damages the sum he had paid [illegible] which would become a net loss to him. The Secretary denied this [illegible] on the ground that money spent in the purchase of real estate [illegible] not recoverable under the statutory provision. [illegible] to be erroneous and, after considering the question [illegible] said, at p. 88:

Court in this cause be, and the same is hereby, [illegible] this cause be, and the same is hereby, remanded to the said Supreme

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In the Supreme Court of the United States

October Term, 1923

No. ____

RAY LYMAN WILBUR, as Secretary of the Interior, petitioner,

v.

THE UNITED STATES OF AMERICA ex rel. Tom Wilcox Consolidated Gold Mining Company, a Corporation

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of Ray Lyman Wilbur, Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above-entitled cause on February 5, 1923 [illegible] reversing the judgment of the Supreme Court of the District of Columbia [illegible] mandamus [illegible]

Pursuant to the [illegible] Act, as Secretary, the respondent [illegible] action in the Supreme Court of the District of Columbia

bia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for the purchase of property containing chrome, which was disallowed by the Secretary of the Interior in so far as such expenditures were concerned. The Supreme Court of the District dismissed this petition, but upon appeal to the Court of Appeals of the District of Columbia this decision was reversed and the case remanded to the Secretary for further proceedings. The action of the Secretary of the Interior in disallowing a similar claim was upheld by this Court in *Work v. Rives*, 267 U. S. 175, prior to the enactment of the Act of February 13, 1929.

The case was disposed of by the Supreme Court of the District of Columbia and by the court below upon the pleadings. The petition (R. 2) alleged that respondent had filed a claim under the War Minerals Relief Act of March 2, 1919 (Appendix, p. 23). This Act provided, in so far as material—

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce . . . chrome . . . in compliance with the request or demand of the Department of the Interior . . . to supply the urgent needs of the Nation in the prosecution of the war . . .

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; * * * *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained * * * chrome * * * in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce * * * chrome * * * for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary; * * *

The petition further alleged in substance that the claim filed by respondent included among such losses the sum of $16,250 expended for the purchase of property containing chrome, and that after hearings the Secretary of the Interior denied the

respondent an award for said sum on the ground [illegible] reimbursable [illegible] The petition alleged that there had been a final decision against the respondent on a claim of his which was subject to review under the Act of February 14, 1929, and asked a review of the decision and appropriate relief.

The petitioner originally filed a response to the petition for certiorari and mandamus, to which were attached exhibits showing the action of the Secretary of the Interior in denying respondent's claim for the expenditure of $16,259. (R. 6.) This response was subsequently withdrawn by stipulation (R. 21), leaving the exhibits for the consideration of the court, and the petitioner answered.

Although the allegation in paragraph 8 of the petition that the respondent had expended moneys for the purchase of property and that such items constituted a net loss to respondent was denied (R. 24), this denial was qualified by paragraph 12 of the answer (R. 25), where it was alleged, in substance, that in the exercise of the discretion conferred on the Secretary of the Interior the petitioner, following similar action by his predecessors, had determined that no allowance should be made for expenditures in purchasing property to which title was rejected, and that respondent's claim had, therefore, been [illegible] by the Secretary of the Interior. Other [illegible] contained in the petition were denied, and respondent moved to dismiss the petition on the ground that the hearings before the Secretary of the Interior denied the

a judgment in which it was directed that "the questions of law raised by the petition were properly adjudicated by the Secretary of the Interior. (R. 28.) Upon respondent's appeal to the Court of Appeals of the District of Columbia that court reversed the judgment of the Supreme Court of the District of Columbia and directed that the cause be remanded for further proceedings not inconsistent with its opinion. (R. 33.) The court below held that the Act of March 2, 1917, required the allowance of claims based upon moneys spent in purchasing land, relying upon its earlier decision in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but made no mention of the reversal of its decision in that case by this Court in *Work* v. *Rives*, 267 U. S. 175.

SPECIFICATION OF ERRORS TO BE URGED.

The court below erred—

(1) In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon the purchase price of property to which respondent retained title.

(2) In holding that as a matter of law the petitioner was required to make an allowance for any net loss sustained by the respondent in the purchase of property to which it still holds title.

(3) In holding that the petitioner should determine as a matter of fact the net loss sustained by

the respondent by reason of the purchase of property to which it still held title.

(4) In holding that petitioner's discretion under the Act of March 2, 1919, in disallowing claims based upon the purchase price of property was eliminated by the Act of February 13, 1929.

(5) In directing the Secretary of the Interior to determine the loss resulting from the expenditure of $16,259 without determining whether the allowance of any such loss would in his opinion be just and equitable.

REASONS FOR GRANTING THE WRIT

1. Unless the Act of February 13, 1929, is to be interpreted as removing from the Secretary all discretion in the allowance of claims, the decision in the present case is in conflict with the decisions of this Court.

In *Work* v. *Rives*, 267 U. S. 175, this Court held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow a claim based upon the cost of obtaining a release from a contract to buy land, which was treated as the cost of real estate, and that the exercise of discretion by the Secretary of the Interior in disallowing such claim was not subject to review by mandamus.

In *Work* v. *Chesapeake Corporation*, 267 U. S. 185, this Court held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow a claim for

interest paid by a claimant upon money borrowed to enlarge the claimant's plant to meet the war necessities, and that the exercise of this discretion was not subject to review by mandamus.

These cases were decided by this Court prior to the enactment of the Act of February 13, 1929. At the time they were decided there was no provision in the statutes for a review of the decision of the Secretary of the Interior in connection with claims under the War Minerals Relief Act, and reference was made to the absence of any provision for such review in the opinion of this Court in *Work* v. *Rives, supra*. The Act of February 13, 1929, provided for a review of the action of the Secretary of the Interior in connection with a claim filed with him under the War Minerals Relief Act upon a petition to the Supreme Court of the District of Columbia filed within one year from the passage and approval of the Act of February 13, 1929. The review provided by the Act of February 13, 1929, was limited by the statute to "any question of law which has arisen or may hereafter arise in the adjustment, liquidation, and payment" of claims. The Act expressly provided that "* * * the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court."

The decision of the court below draws no distinction between the broad discretion of the Secretary of the Interior in making such adjustments and

Since the Act

that decisions of the

may be reviewed only

Court of the District

questions are reviewed by

will be bound, in all

by the decision of the court below.

it is respectfully submitted that the

should be granted.

THOMAS D. THACHER,
Solicitor General.

MAY, 1931.

[illegible] April 29, 1931, the Solicitor of the Depart-

[illegible] Interior stated:

"According to the records of the Interior Department there are 1,000 War Minerals claims, of which 396 involve purchase of property and besides the interest as follows:

[illegible]	$9,082,867
[illegible]	403,926
[illegible]	205,220

Of these 396 claims, 108 are the subject of suits filed in the Court of Claims under the act of February 13, 1929. [illegible] of the 396 cases involve property and [illegible] 111 involve interest. The amount claimed for [illegible] is reduced by reductions for salvage, while the [illegible] would be increased and pos[illegible] decided in accordance to the date of settle[illegible]

[illegible], it appears that there are approxi[illegible] claims involving possession of property which in[illegible] and 111 involving claims for interest and the [illegible] amounts involved would be in excess of $3,000,000."

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 33) is reported in 57 App. D. C. (66) 422. No opinion was rendered by the Supreme Court of the District of Columbia. The judgment of that court, stating the basis of its action, is in the record. (R. 28.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931. (R. 35.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Was the discretion of the Secretary of the Interior under the Act of March 3, 1919, to disallow claims the allowance of which he determined would be unjust and inequitable, removed by the Act of February 13, 1929?

2. Was the action of the Secretary of the Interior in disallowing respondent's claim based upon the purchase price of property, erroneous as a matter of law?

STATUTES INVOLVED

The applicable statutes appear in the Appendix.

ARGUMENT

I

THE ACT OF MARCH 2, 1929, VESTED IN THE SECRETARY OF THE INTERIOR BROAD DISCRETION TO DISALLOW ANY CLAIMS WHICH SHOULD NOT ACCORD WITH HIS SENSE OF MORAL AND EQUITABLE JUSTICE AND WAS NOT DEPRIVED OF THIS DISCRETION BY THE ACT OF FEBRUARY 13, 1929

In *Work v. Rives*, 267 U. S. 175, this Court considered the action of the Secretary of the Interior in disallowing a portion of a claim based upon the amount paid by the claimant to obtain a release from a contract to purchase property, upon appeal from a judgment of the Court of Appeals of the District of Columbia, which affirmed a judgment of mandamus directing the Secretary to allow the claim. While the claim in that case was based upon expenditures made in obtaining a release from a contract to buy land, and the claim in the present case is based upon expenditures made in the purchase of land, the principle involved is the same. The loss in that case was clear, whereas in this case, where the claimant relates title to the property purchased, the loss, if any, must necessarily be incapable of exact ascertainment. In reversing the judgment of the court below, this Court said, at pages 182-183, 181-183:

> The Dent Act was passed by Congress in an effort to do justice and equity to the many persons who could not obtain from

the Government compensation for supplies or services furnished or losses incurred in helping the Government during the war, because of a lack of enforceable contracts or equities. * * *

By section 5 provision was made, not to pay for supplies or services rendered directly to the Government, but to relieve a class of persons who were invited by the Government to invest money in the production and preparing for the production of certain metals or materials difficult to obtain, and needed for the war, and who had thereupon incurred expense therein and had suffered losses because of the coming of the armistice and the consequent destruction of the market for such metals.

The said Secretary was to make adjustments and payments in such case as he should determine to be just and equitable; and the decision of the Secretary was to be "conclusive and final."

* * * * * *

The above summary of section 5 clearly shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and moral considerations. *United States v. Realty Company*, 163 U. S. 427, 439; *Allen v. Smith*, 173 U. S. 389, 402. Congress did not wish to create a legal claim. It was not dealing with vested rights. It did not, as it did with the claims for supplies and services directly furnished the

Government under the first and second sections of the Act, make the losses recoverable in a court, but expressly provided otherwise. It dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fraudulent claims or merely speculative losses. It vested the Secretary with power to reject all losses, except as he was satisfied that they were just and equitable and it made his decision conclusive and final. Final against whom? Against the claimant. He could not resort to court to review the Secretary's decision. This was expressly forbidden. By the fifth proviso, however, the Government was permitted through any of its agencies or even by a committee of Congress duly authorized, to review the settlement by the Secretary and by necessary implication to reverse it. If the Government was defrauded, it was authorized to sue to recover any money paid under the award.

Congress was occupying toward the proposed beneficiaries of section 5 the attitude rather of a benefactor, than of a debtor at law. Congress intended the Secretary to act for it, and to construe the meaning of the words used to describe the elements of the lost losses to be ascertained and to give effect to his interpretation without the intervention of the courts. This statute presents a case of as wide discretion as was held to have been vested in the Secretary of the Navy in the *Decatur Case*.

Nor does the amendment of 1921 change the effect of the Act in this regard. His counsel insist that it was adopted in order to relieve claimants from previous narrow rulings of the Secretary. There is nothing in the amendment that indicates the Congressional purpose to do more than it purports to do, i. e., to enable the Secretary to entertain claims for losses incurred at the instance of any government agencies whether direct and personal or by public invitation, and to enable the Secretary to grant rehearings, correct miscalculation and award additional amounts. The amendments still left all claims to his sense of justice and equity.

In *Work* v. *Chestatee Corporation*, 267 U. S. 185, this Court considered the action of the Secretary of the Interior in disallowing a portion of a claim under Section 5 of the Act of March 2, 1919, based upon interest on money borrowed by the claimant and reversed a judgment of the court below which had affirmed a judgment of the Supreme Court of the District of Columbia issuing a writ of mandamus directing the Secretary of the Interior to allow the claim. This Court said, at page 187:

> The question was one for the Secretary of the Interior to decide, and that finally.

In disposing of the present case the lower court referred to its own earlier decision in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but

did not make any reference to the reversal of that decision by this Court in *Work v. Rives, supra.*

In *Work v. Rives, supra*, this Court held that, in addition to the broad discretion conferred upon the Secretary to determine what allowances and adjustments would be just and equitable, the Act of March 2, 1919, gave him discretion to construe the Act and determine all questions of law arising thereunder. Assuming for the present purpose that the Act of February 13, 1923, permitted a review of the construction placed upon the Act by the Secretary, it is clear that it did not permit a review of the exercise of his discretion in determining what allowances should be made as a matter of justice and equity. The court below recognized no such distinction and proceedings in accordance with its opinion will necessarily deprive the Secretary of the discretion conferred upon him by the Act of March 2, 1919, to disallow all claims which he does not consider just and equitable. If he is only authorized to find the facts and determine the loss therefrom (as he is required to do by the opinion of the court below) he is not free to determine the justice and equity of the claim as the statute requires. If he has already determined this question, the court below was wrong in attempting to review his exercise of discretion. If he has not done so, the court below was wrong in directing him to proceed in such a manner as to deprive him of discretion in determining the equity and justice of the claim.

II

THE SECRETARY'S CONSTRUCTION OF THE STATUTE WAS CORRECT

Since the enactment of the Act of March 2, 1919, the Secretaries of the Interior have uniformly refused to allow claims based upon the purchase price of property to be used in producing the minerals referred to in the Act. This administrative construction should be followed unless clearly wrong. *United States* v. *Finnell*, 185 U. S. 236; *Hall* v. *Payne*, 254 U. S. 343.

The several Secretaries of the Interior relied in part upon the legislative history of Section 5 which was referred to by this Court in *Work* v. *Rives*, *supra*. The War Minerals Act was first introduced in the Senate as an amendment to H. R. 13374, 65th Congress, 3d session. Originally it read in part as follows:

> That the Secretary of the Interior be, and hereby is, authorized and directed to ascertain and determine the amount or amounts of money heretofore invested or contracted to be invested and obligations incurred by any and all persons and investors for producing or for the purpose of producing or preparing for producing or acquiring property for producing [illegible]

During its consideration in the Senate, on January 28, 1919, Senator Smoot objected to that provision of the bill and said:

I want to call the attention of the Senator from Nevada (Senator Henderson) to the words "or acquiring property for producing." It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words "or acquiring property for producing."

Senator Henderson, who was the Chairman of the Senate Committee on Mines and Mining, in charge of the legislation, answered: "I will consent to that, Mr. President." The law as finally enacted was drafted by the House Committee on Mines and Mining and does not contain the phrase "or acquiring property for producing."

The Secretary of the Interior requested the opinion of the Attorney General as to whether he was authorized to adjust, liquidate and pay net losses sustained in the purchase of real estate and losses arising from the payment of interest on borrowed money. Attorney General Sargent in an opinion rendered on March 23, 1926, advised:

I think it must be held that Congress has by acquiescence sanctioned and adopted your

construction as a correct interpretation of its intent. (35 Op. A. G. 426, 430.)

Although the construction placed upon this statute by the several Secretaries of the Interior was called to the attention of Congress (see, for example, page 43 of Secretary Payne's response to Senate Resolution 429, Senate Document 385, 66th Cong., 3d sess.), no statute has been passed which provides expressly or by inference that Congress disapproved the construction of the Act by the Secretaries of the Interior. By this long acquiescence in the administrative construction of the Act it is submitted that Congress has given its approval thereto.

The legislative history of the Act of February 13, 1929, shows that it was not designed to change the construction placed upon the Act of March 2, 1919, by successive Secretaries of the Interior. On January 28, 1929, Mr. Robsion, on behalf of the Committee on Mines and Mining, submitted a report to the House of Representatives in connection with a pending Bill (H. R. 15881), which subsequently was enacted and approved as the Act of February 13, 1929. Mr. Robsion said in part:

> The bill does not enlarge in any manner the scope of existing war minerals legislation, nor does it permit the filing of any new claims. It simply confers upon the Supreme Court of the District of Columbia, the appellate courts, and the Supreme Court of the United States jurisdiction to

pass upon questions of law for the guidance of the Secretary of the Interior for his further administration of the war minerals act.

It does not take the administration of the war minerals act away from the Secretary of the Interior as provided for in the original act.

Various attempts to enact legislation specifically designed to reverse the construction of the Act by the Secretaries of the Interior were unsuccessful. On March 25, 1926, Senator Oddie, on behalf of the Committee on Mines and Mining, submitted a favorable report to the Senate upon a Bill (S. 3641) to amend the Act of March 2, 1919, which proposed Bill contained the following provision:

> SEC. 3. That the Secretary of the Interior is hereby authorized and directed to include in his adjustments and payments in each claim all items of net loss, *including moneys expended or obligations incurred for or in connection with the purchase or lease of property* and money paid and due to be paid for interest on borrowed capital. (Italics ours.)

This Bill did not pass.

Prior to the passage of the Act of February [illegible] House Bill 14131 was on the calendar, but was withdrawn in favor of House Bill 15861, which was subsequently enacted as the Act of February [illegible] and contained the following provision:

> the appellate courts and the Supreme Court of the United States jurisdiction to

That section 5 of the Act entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, commonly referred to as the War Minerals Relief Act, is hereby amended to authorize and direct the Secretary of the Interior to determine, adjust, liquidate, and pay *net losses resulting from moneys expended or obligations incurred for the purchase or lease of property* acquired for the production of, or in the preparation to produce, either manganese, chrome, pyrites, or tungsten; and also to determine, adjust, liquidate, and pay net losses arising from money paid or due to be paid for interest on borrowed capital not to exceed the lawful rate of interest in the State where the obligation was incurred. (Italics ours.)

If Congress had intended to change the construction of the Act, which had been followed for a decade by successive Secretaries, that would have been done by a simple change in the substantive provisions of the law. These provisions were not changed and the court review was of questions of law determined under the statute without change. The provision for review did not justify the court below in preempting the discretion of the Secretary and changing the construction of the Act in which Congress had apparently acquiesced.

CONCLUSION

Because of the importance of the question involved in the administration of the law by the Secretary of the Interior and the apparent conflict between the decision of the court below and the decisions of this Court, it is submitted that the petition should be granted and that the judgment below should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

SETH W. RICHARDSON,
Assistant Attorney General.

G. A. IVERSON,
Special Assistant to the Attorney General.

WHITNEY NORTH SEYMOUR,
Attorney.

E. C. FINNEY,
Solictor, Interior Department.

MAY, 1931.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war, said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling

and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior

to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine

for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.

Act of February 13, 1924, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for cer-

tiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 22) is reported in 47 F (2d) 422. No opinion was rendered by the Supreme Court of the District of Columbia. The judgment of that court, stating the basis of its action, is in the record. (R. 19.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931. (R. 24.) The petition for certiorari was filed May

2, 1931, and was granted May 25, 1931. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Was the action of the Secretary of the Interior in disallowing a portion of respondent's claim, based upon the purchase price of property, title to which was retained, erroneous as a matter of law?

2. Was the discretion of the Secretary of the Interior under the Act of March 2, 1919, to disallow claims the allowance of which he determined to be unjust and inequitable, removed by the Act of February 13, 1929?[1]

STATUTES INVOLVED

The applicable statutes appear in the Appendix, *infra*, pp. 24–29.

STATEMENT

Pursuant to the Act of February 13, 1929, c. 182, 45 Stat. 1166, the respondent filed a petition in the Supreme Court of the District of Columbia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for the purchase of property containing chrome, which was disallowed by the Secretary of the Interior in so far as such expenditures were concerned. The Supreme Court of the District of Columbia dismissed this

[1] The same question is involved in No. 67.

petition, but upon appeal to the Court of Appeals of the District of Columbia this decision was reversed and the case remanded to the Secretary for further proceedings. The case was disposed of upon the pleadings. The petition (R. 1) alleged that respondent had filed a claim under the War Minerals Relief Act of March 2, 1919. This Act provided, in so far as here material—

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * chrome * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the Nation in the prosecution of the war * * *.
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; * * * *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained * * * chrome * * * in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction

> of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce * * * chrome * * * for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: * * *

The petition further alleged in substance that the claim filed by respondent included among net losses the sum of $16,259, expended for the purchase of property containing chrome, and that after hearings the Secretary of the Interior denied the respondent an award for said sum on the ground that payment for property was not reimbursable under the law. The petition alleged that there had been a final decision against the respondent on a question of law which was subject to review under the Act of February 13, 1929, and asked a review of the decision and appropriate relief.

The petitioner originally filed a response to the petition for review and for mandamus to which were attached exhibits showing the action of the Secretary of the Interior in denying respondent's claim for the expenditure of $16,259. (R. 4.) This response was subsequently withdrawn by stipulation (R. 15), leaving the exhibits for the con-

sideration of the court, and the petitioner answered.

Although the allegation in paragraph 8 of the petition that the respondent had expended moneys for the purchase of property and that such items constituted a net loss to respondent was denied (R. 16), this denial was qualified by paragraph 12 of the answer (R. 17), where it is alleged in substance that in the exercise of the discretion confided to the Secretary of the Interior the petitioner, following similar action by his predecessors, had determined that no allowance should be made for expenditures in purchasing property to which title was retained, that respondent's claim was for sums expended in the purchase of property to which respondent continued to hold title and that respondent's claim had therefore been disallowed.

The Supreme Court of the District of Columbia dismissed the petition for review and mandamus by a judgment in which it was ordered and directed "that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior * * *." (R. 19.)

Upon respondent's appeal to the Court of Appeals of the District of Columbia that court reversed the judgment of the Supreme Court of the District and directed that the cause be remanded for further proceedings not inconsistent with its opinion. (R. 22.) The Court of Appeals held that the Act of March 2, 1919, required the allowance of claims based upon moneys spent in pur-

chasing land, relying upon its earlier decisions in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but made no mention of the reversal of its decision in that case by this court in *Work* v. *Rives*, 267 U. S. 175.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

(1) In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon the purchase price of property to which respondent retained title.

(2) In holding that as a matter of law the petitioner was required to make an allowance for any net loss sustained by the respondent in the purchase of property to which it still held title.

(3) In holding that the petitioner should determine as a matter of fact the net loss sustained by the respondent by reason of the purchase of property to which it still held title.

(4) In holding that petitioner's discretion under the Act of March 2, 1919, in disallowing claims based upon the purchase price of property was eliminated by the Act of February 13, 1929.

(5) In directing the Secretary of the Interior to determine the loss resulting from the expenditure of $16,500 without determining whether the allowance of any such loss would in his opinion be just and equitable.

SUMMARY OF ARGUMENT

1. As a matter of law, a claim based upon expenditures by the respondent for the purchase of property to which it retained title was not allowable, and the petitioner properly disallowed respondent's claim.

2. Even if the allowance of respondent's claim was not prohibited as a matter of law, the petitioner had discretion to disallow the claim under the Act of March 2, 1919, which was not removed by the Act of February 13, 1929. If the petitioner has exercised that discretion, it is not open for review. If he has not exercised it, the court below erred in directing him to proceed in such a way as to deprive him of the opportunity to exercise it.

ARGUMENT

I

THE PETITIONER'S ACTION IN DISALLOWING RESPONDENT'S CLAIM WAS CORRECT AS A MATTER OF LAW

If, as we contend, the petitioner was justified as a matter of law in disallowing respondent's claim, based upon expenditures for the purchase of property to which it retained title, it will be unnecessary to consider the extent of petitioner's discretion in connection with the allowance or disallowance of claims under the Act of March 2, 1919, and whether that discretion has been affected by the Act of February 13, 1929. Accordingly, the question of discretion and the effect of the decision of this Court in *Work* v. *Rives*, 267 U. S. 175 (which deals with the

subject of petitioners' discretion under the Act of March 2, 1919), are dealt with in the second division of the argument.

The answer alleges that the petitioner and his predecessor have held that where title to real estate purchased by a claimant continued to be held by the claimant at the date of the passage of the Act of March 2, 1919, there was no loss existing at that date for which compensation could be made (R. 16), and, in substance, that, under the statute, the petitioner was required to disallow the respondent's claim based upon expenditures for property to which it still retained title.

We submit that this disposition of respondent's claim was based upon a correct interpretation of the statute. The Act of March 2, 1919, expressly limited the Secretary of the Interior to the adjustment and payment of "net losses" which had been "suffered." The Secretary was forbidden by the statute to include profits of any kind in the allowance of any such claim, nor was he allowed to recognize any investment for mere speculative purposes. While the respondent presented a claim for alleged loss arising out of expenditures for the purchase of property, it appears that respondent retained title to that property. There is no indication in the record that the respondent proved that the property declined in value after purchase so that the respondent would suffer any loss as a result of the purchase. There is no indication

whatever that the property was entirely valueless, except the bare claim of the respondent that it had sustained a loss in the full amount of the purchase price. On the contrary, it appears that at the time of the armistice a considerable quantity of ore mined from the property was on hand and that 228 tons had been salvaged at $43.40 per ton. (R. 8.) There is no indication that the ore so salvaged exhausted the ore supply, or that if it did exhaust the supply of chrome ore the property did not have other value for mineralogical or agricultural purposes. In these circumstances the petitioner could not have concluded that the respondent had suffered a loss, or that a profit prohibited by the statute would not result to the respondent if the claim was allowed and paid. Accordingly, it is clear that solely as a matter of law, entirely aside from the considerations of justice and equity which, under the statute, were to govern the Secretary's exercise of discretion, the petitioner's disallowance of the claim was correct and the court below erred in reversing his determination with respect thereto.

While it is our contention that the statute clearly required the action which the Secretary took with respect to respondent's claim, we also contend that even if the terms of the statute do not explicitly require this disposition of the claim, the uniform action of successive Secretaries of the Interior in disallowing similar claims is an administrative construction of the statute which should not be dis-

turbed unless it is clearly wrong. *United States* v. *Finnell*, 185 U. S. 236; *Hall* v. *Payne*, 254 U. S. 343.

The statute related to the granting of a new and unusual gratuity the limitations of which were not explicitly prescribed, and it invited and required administrative construction. The construction of statutes, general in their directions, has been held to be for the Secretary, without review by mandamus. *Hall* v. *Payne, supra; Wilbur* v. *United States*, 281 U. S. 206; *Alaska Smokeless Coal Co.* v. *Lane*, 250 U. S. 549; *Ness* v. *Fisher*, 223 U. S. 683, 693. The provision of the Act of February 13, 1929, authorizing a review of questions of law, certainly did not authorize the court below to reverse the decision of the petitioner unless it clearly violated the express provisions of the statute. Since the petitioner's decision was based upon a correct construction of the statute, or, at least, upon a permissible interpretation, the reversal was error.

It appears from the answer (R. 16) that the several Secretaries of the Interior who have considered claims under the Act of March 2, 1919, have disallowed all claims based upon the purchase price of property (whether title was retained or not), but the correctness of that determination is only involved in the present case so far as it relates to claims for the purchase of property to which title was retained. It is not necessary, therefore, for present purposes to deal with the propriety of

the interpretation of the statute upon which the disallowance of all claims for the purchase price of property was predicated, nor to discuss the legislative history of the Act of March 2, 1919, which appears to sustain this interpretation.[2]

The Secretary of the Interior requested the opinion of the Attorney General as to whether he was authorized to adjust, liquidate, and pay net losses sustained in the purchase of real estate and losses arising from the payment of interest on borrowed money. Attorney General Sargent, in an opinion rendered March 23, 1928, advised:

> I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. (35 Op. A. G. 426, 430.)

Although the construction placed upon the statute by the several Secretaries of the Interior was called to the attention of Congress (see, for example, pp. 21, 43 of Secretary Payne's response to Senate Resolution 429, Senate Document 385, 36th Cong., 3d sess.), no statute has been passed which shows expressly or by inference that Congress disapproved the construction of the Act by the Secretaries of the Interior. By this long acquiescence in the administrative construction of the Act it is submitted that Congress has given its approval thereto.

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[2] This legislative history is set forth in petitioner's brief in support of the petition for certiorari in this case.

The legislative history of the Act of February 13, 1929, shows that it was not designed to change the construction placed upon the Act of March 2, 1919, by successive Secretaries of the Interior. On January 28, 1929, Mr. Robsion, on behalf of the Committee on Mines and Mining, submitted a report (H. Rep. 2250, 70th Cong., 2d sess.) to the House of Representatives in connection with a pending Bill (H. R. 15681), which subsequently was enacted and approved as the Act of February 13, 1929. Mr. Robsion said in part:

> The bill does not enlarge in any manner the scope of existing war minerals legislation, nor does it permit the filing of any new claims. It simply confers upon the Supreme Court of the District of Columbia, the appellate courts, and the Supreme Court of the United States jurisdiction to pass upon questions of law for the guidance of the Secretary of the Interior for his further administration of the war minerals act.
>
> It does not take the administration of the war minerals act away from the Secretary of the Interior as provided for in the original act.

Various attempts to enact legislation specifically designed to reverse the construction of the Act by the Secretaries of the Interior were unsuccessful. On March 25, 1926, Senator Oddie, on behalf of the Committee on Mines and Mining, submitted a favorable report (S. Rep. 475, 69th Cong., 1st sess.) to the Senate upon a bill (S. 3641) to amend the

Act of March 2, 1919, which proposed bill contained the following provision:

> SEC. 3. That the Secretary of the Interior is hereby authorized and directed to include in his adjustments and payments in each claim all items of net loss, *including moneys expended or obligations incurred for or in connection with the purchase or lease of property* and money paid and due to be paid for interest on borrowed capital. (Italics ours).

This bill did not pass.

Just prior to the passage of the Act of February 13, 1929, House Bill 14131 was on the calendar but was withdrawn in favor of House Bill 15861, which was subsequently enacted as the Act of February 13, 1929. H. R. 14131 contained the following provisions:

> That section 5 of the Act entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, commonly referred to as the War Minerals Relief Act, is hereby amended to authorize and direct the Secretary of the Interior to determine, adjust, liquidate, and pay *net losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired* for the production of, or in the preparation to produce, either manganese, chrome, pyrites, or tungsten; and also to determine, adjust, liquidate, and pay net losses arising

> from money paid or due to be paid for interest on borrowed capital not to exceed the lawful rate of interest in the State where the obligation was incurred. (Italics ours.)

If Congress had intended to change the construction of the Act which had been followed for a decade by successive Secretaries, that could have been done by a simple change in the substantive provisions of the law. These provisions were not changed and the court review was of questions of law determined under the statute without change. The statute was correctly interpreted by the petitioner. His action in disallowing the respondent's claim was correct. Therefore, it was error for the court below to reverse the petitioner's determination.

II

UNDER THE ACT OF MARCH 2, 1919, THE PETITIONER WAS VESTED WITH DISCRETION IN THE ALLOWANCE AND DISALLOWANCE OF CLAIMS WHICH WAS NOT REMOVED BY THE ACT OF FEBRUARY 18, 1929

The Act of March 2, 1919, not only defined the losses upon which claims might be based, but it also provided expressly that "said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable * * *." The Act also provided that:

> * * * no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so

> incurred by the claimant were made in good faith, for or upon property which contained * * * chrome * * * in sufficient quantities to be of commercial importance * * *

These provisions obviously vested in the Secretary of the Interior complete discretion in the allowance and disallowance of claims. In this division of the argument we contend that even if the petitioner was wrong in interpreting the Act of March 2, 1919, as requiring him to disallow a claim based upon expenditures for the purchase of property to which title was retained, the court below erred in entering a judgment which denied him a discretion expressly conferred upon him by the Act of March 2, 1919. The nature and extent of the discretion of the Secretary of the Interior under the Act of March 2, 1919, was considered by this Court in *Work* v. *Rives*, 267 U. S. 175. That case involved the action of the Secretary of the Interior in disallowing a portion of the claim based upon the amount paid by the claimants to obtain a release from a contract to purchase property, and came to this Court by appeal from a judgment of the Court of Appeals of the District of Columbia, which affirmed a judgment of mandamus directing the Secretary to allow the claim. While the claim in that case was based upon expenditures made in obtaining a release from a contract to buy land, and the claim in the present case is based upon expenditures made in the purchase of land, the

principle involved is the same. The loss in that case was clear, whereas in this case, where the claimant retains title to the property purchased, the loss, if any, cannot be exactly determined. In reversing the judgment of the court below, this Court said, at pages 178–179, 181–183:

> The Dent Act was passed by Congress in an effort to do justice and equity to the many persons who could not obtain from the Government compensation for supplies or services furnished or losses incurred in helping the Government during the war, because of a lack of enforceable contracts or equities.
>
> * * *
>
> By section 5, provision was made, not to pay for supplies or services rendered directly to the Government, but to relieve a class of persons who were invited by the Government to invest money in the production and preparing for the production of certain metals or materials difficult to obtain, and needed for the war, and who had thereupon incurred expense therein and had suffered losses because of the coming of the armistice and the consequent destruction of the market for such metals.
>
> The said Secretary was to make adjustments and payments in each case as he should determine to be just and equitable; and the decision of the Secretary was to be "conclusive and final."
>
> * * * * *

The above summary of section 5 clearly shows that Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and moral considerations. *United States* v. *Realty Company*, 163 U. S. 427, 439; *Allen* v. *Smith*, 173 U. S. 389, 402. Congress did not wish to create a legal claim. It was not dealing with vested rights. It did not, as it did with the claims for supplies and services directly furnished the Government under the first and second sections of the Act, make the losses recoverable in a court, but expressly provided otherwise. It dealt with the subject with the utmost caution. It hedged the granting of the equitable gratuity with limitations to prevent the use of the statute for the recovery of doubtful or fradulent claims or merely speculative losses. It vested the Secretary with power to reject all losses except as he was satisfied that they were just and equitable and it made his decision conclusive and final. Final against whom? Against the claimant. He could not resort to court to review the Secretary's decision. This was expressly forbidden. By the fifth proviso, however, the Government was permitted through any of its agencies or even by a committee of Congress duly authorized, to review the settlement by the Secretary and by necessary implication to reverse it. If the Government

was defrauded, it was authorized to sue to recover any money phid under the award.

Congress was occupying toward the proposed beneficiaries of section 5 the attitude rather of a benefactor, than of a debtor at law. Congress intended the Secretary to act for it, and to construe the meaning of the words used to describe the elements of the net losses to be ascertained and to give effect to his interpretation without the intervention of the courts. This statute presents a case of as wide discretion as was held to have been vested in the Secretary of the Navy in the *Decatur Case*.

Nor does the amendment of 1921 change the effect of the Act in this regard. His counsel insist that it was adopted in order to relieve claimants from previous narrow rulings of the Secretary. There is nothing in the amendment that indicates the Congressional purpose to do more than it purports to do, i. e., to enable the Secretary to entertain claims for losses incurred at the instance of any government agencies whether direct and personal or by public invitation, and to enable the Secretary to grant rehearings, correct miscalculation and award additional amounts. The amendments still left all claims to his sense of justice and equity.

In *Work* v. *Chestatee Corporation*, 267 U. S 185, this Court considered the action of the Secretary of the Interior in disallowing a portion of a claim under Section 5 of the Act of March 2, 1919, based

upon interest on money borrowed by the claimant, and reversed a judgment of the court below which had affirmed a judgment of the Supreme Court of the District of Columbia issuing a writ of mandamus directing the Secretary of the Interior to allow the claim. This Court said, at page 187:

> The question was one for the Secretary of the Interior to decide, and that finally.

In disposing of the present case the lower court referred to its own earlier decision in *Work* v. *United States ex rel. Rives*, 54 App. D. C. 84, but did not make any reference to the reversal of that decision by this Court in *Work* v. *Rives*, *supra*.

In *Work* v. *Rives*, *supra*, this Court held that, in addition to the broad discretion conferred upon the Secretary to determine what allowances and adjustments would be just and equitable, the Act of March 2, 1919, gave him discretion to construe the Act and determine all questions of law arising thereunder. Assuming for the present purpose that the Act of February 13, 1929, permitted a review of the construction placed upon the Act by the Secretary, it is clear that it did not permit a review of the exercise of his discretion in determining what allowances should be made as a matter of justice and equity. The court below recognized no such distinction and proceeding in accordance with its opinion will necessarily deprive the Secretary of the discretion conferred upon him by the

Act of March 2, 1919, to disallow all claims which he does not consider just and equitable. If he is only authorized to find the facts and determine the loss therefrom (as he is required to do by the opinion of the court below) he is not free to determine the justice and equity of the claim as the statute requires.

As we have pointed out above, it does not appear that any proof was offered by the respondent to show that it had sustained any loss. There was apparently no proof that the property purchased by the respondent had declined in value, and there is no indication whatever in the record that it was worthless, as the respondent must have contended that it was in fixing the loss as the full purchase price. Aside from the bare claim by the respondent, the only evidence in the record as to the value of the property was that chrome ore in a substantial amount and of substantial value had been extracted from the property and salvaged. There is nothing in the record to show that the property has been stripped of all chrome, or that the property had no salvage value for other purposes.

The answer of the petitioner does not clearly allege that after hearing such evidence as the respondent cared to offer the petitioner decided that it would be unjust and inequitable to make any allowance to the respondent for expenditures in the purchase of property to which title was re-

tained. If no allegation in the answer permits the interpretation that the petitioner has already exercised his discretion in deciding whether it would be just and equitable to allow respondent's claim, the statute requires that he should be allowed to exercise that discretion. As we interpret the judgment of the court below, however, the petitioner has been directed to find the facts and to make an allowance in accordance with that finding. Under that judgment he could not disallow the claim, because he concluded that it would be unjust and inequitable to allow it. It is difficult to forecast the condition of proof which might induce the petitioner to decide that the allowance of the claim would be unjust and inequitable, but it requires little exercise of the imagination to conclude that the proof adduced might suggest to the petitioner that he should disallow the claim in the exercise of his discretion. The judgment of the court below denies all opportunity to exercise that discretion, and for that reason it is erroneous.

In paragraph 12 of the answer (R. 18) the petitioner alleges that—

> * * * his action rejecting the petitioner's claim to reimbursement for the purchase price of the real estate known as the Deer Creek Mine, which is affirmed and acquiesced in by the respondent, being based upon his finding that no such loss ever was sustained as a matter of fact, is not subject

> to review under the terms of the act of February 13, 1929, pursuant to which the petition in the instant case was filed.

If this allegation is to be interpreted as alleging a hearing before the petitioner and a determination by him in the exercise of his discretion that in fact the respondent suffered no loss in the purchase of property to which it retained title, and that, accordingly, it would be unjust and inequitable to make any allowance to the respondent in connection with such expenditures, it is clear that the judgment of the court below was erroneous, because it was based upon a review of the petitioner's determination upon a question of fact and of the exercise of petitioner's discretion. A review of the Secretary's determination upon a question of fact is expressly prohibited by the Act of February 13, 1929, which provides in part:

> * * * the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

The Act of February 13, 1929, does not give any right of review of the exercise of the Secretary's discretion in determining whether the allowance of a claim would be just and equitable, and the exercise of this discretion, therefore, is still as final and conclusive as it was held to be in *Work* v. *Rives, supra,* and *Work* v. *Chestatee Corporation, supra.*

CONCLUSION

The judgment of the Court of Appeals of the District of Columbia is erroneous and should be reversed.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
WHITNEY NORTH SEYMOUR,
G. A. IVERSON,
Special Assistants to the Attorney General.
E. C. FINNEY,
Solicitor, Interior Department.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all pay-

ments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said

Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred, and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and

also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

ACT OF NOVEMBER 23, 1921, C. 137, 42 STAT. 322

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,
Petitioner,

v.

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY, A CORPORATION, *Respondent.*

REPLY TO PETITION FOR WRIT OF CERTIORARI.

EDGAR WATKINS,
and J. C. TRIMBLE,
Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 935.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,
Petitioner,

v.

THE UNITED STATES OF AMERICA EX REL. THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY, A CORPORATION, *Respondent.*

REPLY TO PETITION FOR WRIT OF CERTIORARI AND BRIEF THEREON.

Statement of the Case.

Petitioner's statement of the case contains some argument and is, we submit, not adequate or fully accurate.

At page 2 of the petition Work vs. Rives, 267 U. S. 175, is cited as holding "The action of the Secretary of the Interior in disallowing a similar claim was upheld by this Court." What this Court did was to

say that as the law stood when that decision was rendered the Secretary was vested "with power to reject all losses except as he was satisfied that they were just and equitable and it made his decision conclusive and final", and further this Court held that under the statute then in force a review of the Secretary's decision "was expressely forbidden". As we shall later show such review is now expressly authorized.

The Act of October 5, 1918, which we deem pertinent is not referred to in this petition. For relevant provision see Appendix *post* 9.

At page 4 of the petition certain general references are made to the answer filed by petitioner in the trial court and it is said that

> "the Secretary of the Interior the petitioner, following similar action by his predecessors, had determined that no allowance should be made for expenditures in purchasing property to which title was retained, and that respondent's claim had, therefore, been disallowed."

Nowhere does it appear that the Secretary or any of his predecessors denied this or any other claim because "title was retained.",

This record shows:

> "Deductions:
> Property.....$16,259.00 (Tr. 12)
>
> "I have no doubt whatsoever that the former Commission was right in holding this to be purchase of property and not an allowable item.
> The claim should be denied.
>
> (Signed) IRA E. ROBINSON,
> *Commissioner.*"

(Tr. 15).

"In the light of the foregoing it is abundantly clear that the expenditure in question was made to obtain a transfer of property and mining rights. Such expenditures are not reimbursable under the law, and no further award will be made.

(signed) E. C. FINNEY,
Acting Secretary."

(Tr. 18).

"It is clear beyond question that the expenditure aforesaid represents the purchase price of the mine." (Tr. 18).

General allegations in petitioner's answer can not destroy the effect of admissions in exhibits thereto.

Jurisdiction.

In Federal Radio Commissioner vs. General Electric Company, 281 U. S. 464, 469, this Court said:

"It (this Court) cannot give decisions which are merely advisory nor can it exercise or participate in the exercise of functions which are essentially legislative or administrative."

Similar decisions are:

Massachusetts v. Mellon, 262 U. S. 447;
Texas v. Interstate Commerce Commission, 258 U. S. 158, 162;
Ex Parte Bakelite Corporation, 279 U. S. 438, at 454, note 14.

Reasons Urged by Petitioner for Granting the Writ.

Petitioner (Petition, p. 6, *seq.*) claims that the decision of the Court of Appeals of the District "is in

conflict with the decisions of this Court" in Work vs. Rives, 267 U. S. 175, and Work vs. Chestatee Corporation, 267 U. S. 185. The decision of this Court relied on were based on the ruling that the Secretary had full and final discretion. That full and final discretion has been taken away by the Act of February 13, 1929, so far as the legal issue here presented is involved. (See Act in Petition 27, 28.)

The Act of February 13, 1929, gives the right of review of "any question of law which has arisen or may hereafter arise." Petitioner by his answer raised a "question of law". On this point the issue is stated by the Court of Appeals as it was shown in petitioner's answer in the trial court. It was said:

> "The answer also states:
>
> 'It is admitted herein that money was paid by relator in the purchase of property, and if the court holds that losses were sustained thereby and are allowable in cases where claimant retains title, the amount thereof will be subsequently determined by the Secretary of the Interior.'
>
> It is apparent, therefore, that the denial of the allegation that the amount paid by the petitioner for the property constituted a net loss, coupled with the explanation, raises an issue of law, not of fact. That is, the Secretary, without examining the facts, held as matter of law that no loss could be suffered, within the meaning of the act, by one who had bought property and still retained title thereto. That is the sole question presented for our consideration, and the pleadings were obviously drawn for the purpose of raising it squarely and obtaining a decision thereon."

It is submitted that the former purpose of the Secretary having the object of "obtaining a decision" on this legal question cannot now be withdrawn and that such a decision would, as stated by the Court of Appeals, leave open to the Secretary the issue, "whether a net loss in the present case has or has not been suffered". (Tr. 35) This quotation from the opinion below completely answers the claim of petitioner (Pet. 8) that no power is left in the Secretary to determine whether or not a particular amount claimed for "allowance is just and equitable". If title is retained and the property has value, "the amount claimed for property would be reduced by reductions for salvage." While the quotation just given is not of record, petitioner uses it and therefore cannot object to our use thereof.

Reply to Brief in Support of Petition.

The citation to the opinions in the Courts below are correctly given and as to jurisdiction we have already referred to certain decisions.

Questions Presented.

The only question presented is:

Is the Secretary required in adjusting, liquidating and paying net losses to pay such losses as were actually sustained in the purchase of real estate?

Argument.

That respondent is entitled to its proper net losses is conceded. It expended money for property. This property has been lost as found by the Secretary who deducted the amount thereof from total losses.

The statute says expenditures made "for or upon property". The Secretary in effect struck from the statute the word "for". That respondent's property is so valueless that it could not be sold, makes immaterial here the fact of retention of title. "For" is not ambiguous. To say: "I gave $16,000. for a tract of land" conveys a certain meaning. This meaning is confirmed by the fourth proviso of the statute which reads:

> "That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that *moneys were invested* or obligations were incurred subsequent to April 6, 1917, and prior to November 12, 1918, in a legitimate attempt to produce * * * chrome * * * for the prosecution of the war * * *. (Emphasis ours)."

Petitioner cites United States vs. Realty Company, 163 U. S. 427, 439, and Allen vs. Smith, 173 U. S. 389, 402. The answer to those cases, if any be necessary, is that the Act of October 5th, 1918 (*Post* 9) gave the right to just compensation for which the Act of March 2, 1919, gave one remedy. In the second case cited which but followed the first case, it was held that the law there, and that is true here, was passed "in recognition of a moral obligation" and was not "a gift by the government".

As the statute here for construction is unambiguous, legislative history and administrative construction are alike irrelevant. Petitioner, however, in brief seeks support from both. If such irrelevant matters are looked to, it will be found that they but confirm the meaning given by the Court of Appeals to the language of the statute.

Opportunity is given the Court were such desirable or necessary in our Appendix hereto to follow legislative history and administrative construction. It is there shown:

During the Great War certain minerals could not be imported and it became necessary for the United States to stimulate their production, "to provide further for the national security and defense" and the Act of October 5th, 1918, was passed (*Post* 9). That Act provided for "just compensation" and appropriated $50,000,000. The Act became a law too near to the Armistice to be used and was supplemented by the Act of March 2, 1919 (The applicable section of the 1919 Act is quoted on page 23 of the petition here.) That the Act of 1919 was supplemental to the Act of 1918 appears from the title to the bill introduced in the Senate (*Post* 11). The Act of March 2, 1919, reduced this appropriation from $50,000,000. to $8,500,000. By H. J. 170 and the report of the Committee on Mines and Mining, dated March 25, 1920, the Commission appointed by the Secretary was severely criticized. (*Post* 17) Thereafter, the Supreme Court and the Court of Appeals held that net losses for purchase of property were properly allowable and on February 18, 1924, the Secretary wrote to the Chairman of the Committee on Mines and Mining of the Senate that more money would be needed as a result of such decisions. (See Calendar No. 306, 68th Congress, 1st Session, Report No. 292 and *Post* 19.) It may be noted parenthetically that the letter from the Solicitor of the Department of the Interior, dated April 29, 1931, and copied in the Petition herein at page 10, contains the same figures of estimated claims used by the Secretary in 1924.

When the Secretary appealed for more appropriations, the Congress on June 7, 1924, struck the limitation of $8,500,000, leaving the original appropriation of $50,000,000. (*Post* 19) Thus did the Congress evidence its intention to have payments made for net losses "for" "property". After this Court held that no court could review the action of the Secretary, the Congress again showed that it meant the Secretary to make an award for "net losses" suffered "for" purchase of property, and the Act of February 13, 1929, was passed. (See Act petition herein pp. 27, 28.)

Of course, the Congress did not do the unusual and dangerous act of making a limitation on its statute by specifying "purchase of property" or any other item of net loss. The broad language covered all net losses and if one or a few items had been stated, all others would have been excluded. So, Congress as always, except in private claim bills, spoke in general terms.

Agreeing that the petition herein may be presented at the first opportunity, it is respectfully submitted that the writ of certiorari should be denied.

May .., 1931.

EDGAR WATKINS,
Atlanta, Georgia;
and J. C. TRIMBLE,
Washington, D. C.
Counsel for Respondent.

Appendix

LEGISLATIVE HISTORY.

General Statement.

A state of war having been declared between the United States and the government of Germany on the 6th day of April, 1917, importations of certain minerals from other countries were shut off and it became necessary that we produce in this country all such minerals. The question was discussed elaborately in the Congress, the discussion resulting in the passage of a bill approved October 5, 1918.

Act October 5, 1918.

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Act is printed 40 Stat. 1009, and following. In section 1 thereof it is stated:

"By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metalurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * chromium * * * as the President may, from time to time,

> determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 and 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as a revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including just compensation under section three."

Sections 7, 8, and 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the Act, which shall be upon the proclamation of peace by the President.

Sections 11 and 12 are not material to the issue here.

This Act having been approved so near to the date of the Armistice, it was not enforced by the Secretary of the Interior, the Honorable Franklin K. Lane.

Legislative Discussion Preceding Passage of Act March 2, 1919.

As it would have been an unnecessary loss to enforce the Act of October 5, 1918, after the war was ended, the question was presented to the Congress of how to give "just compensation" to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government. After hearings, and on the 15th day of December, 1918, Senator Henderson introduced a bill entitled,

> "A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sustained by investments preparatory to production of war minerals mentioned in said Act."

This was called Senate 5234. In the House of Representatives House Bill 13274 was introduced by Congressman Dent December 7, 1918. On January 28, 1919, Congressional Record, p. 2310, Senator Smoot, in a running debate, said:

"I will ask the Senator (meaning Senator Henderson) if it would not be very much better to strike out the words 'or acquiring property for producing'?".

To this Senator Henderson answered:

"I will consent to that, Mr. President."

On the next day, the debate continuing, Senator Henderson expressed the view that he would accept amendments "in order that we may get to conference with it."

The House having passed a bill, and the Senate having passed its bill, the matter came up for conference.

The bill pending to which Senator Smoot made reference was not the bill passed. In the bill that was subsequently passed the words "or acquiring property" were not continued, but more appropriate words were used, to wit: "for" and "investment," and in order to meet the objection of Senator Smoot *speculative profits were prohibited.*

Bill H. R. 13274, being subsequently passed by the Senate with Senator Henderson's amendment, was sent to conference and the conferees being unable to agree four times, so reported to their respective Houses. The Committee of Mines and Mining of the House of Representatives, after such disagreements, met and reported to the House an amendment offered as an amendment to the Henderson amendment. This was debated at length and finally the House voted instructing its conferees to offer in the conference this committee amendment to the Henderson amendment. This was done and the Senate conferees ac-

cepted the action of the House and so reported to their respective bodies. The conference report being accepted, the bill was passed and approved March 2, 1919 (Public No. 322, 65th Congress).

Congressman Wingo, a member of the Committee on Mines and Mining, called attention, pages 4265 and following, to the differences between the minerals amendment drawn by his committee as a substitute for the Henderson amendment and showed that it was an entirely different bill.

The Secretary of the Interior, after the passage of the Act of March 2, 1919, appointed a commission to administer that Act. This commission was so niggardly in its allowances to claimants and so narrow in its construction of the statute that claimants under the Act brought the matter to the attention of the Congress. The House Committee on Mines and Mining had hearings which are printed under the title "Hearings Before the Committee on Mines and Mining on H. J. Res. 170." The hearings were begun October 22, 1919, and the report contains 594 printed pages.

In the course of the hearings the opinion of the Attorney General in which the statement of Senator Smoot was quoted, came up for discussion. Congressman Wingo, who was a member of the Committee on Mines and Mining at the time of the discussion and when the Act of March 2, 1919, was passed discussed the opinion of the Attorney General, referred to the statements of Senator Smoot, and gave a history of what actually occurred. On page 555 of the Committee's report, referred to above, Mr. Wingo said:

> "Senator Smoot, if he had adhered to his original position, would have been against the

conference report; he would have been against everything, but Senator Smoot is a very practical man; after he made this short two or three-minute speech in the Senate he got to investigating the question. It is a matter of common knowledge that the claimants showed him the error of his position by private conversation; it is a matter of common knowledge that the claimants went around here and explained to members of Congress, and explained it to Senators. So Senator Smoot afterwards found that there was a just and proper demand. Now let me show you—I will read you from the very utterances that he made at the time he objected to this language. It will show you that he is objecting to the very thing that the war minerals relief bill does. On January 28, 1919, page 2311 of the Congressional Record, he says:

> "'I want to call the attention of the Senator from Nevada to the words "or acquiring property for producing." It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals, we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far'."

Continuing the discussion, at page 556, he said:

> "Mr. Smoot said that that would be going too far because he suffered loss by reason of the war stopping sooner than he thought that it would. Now, what was the whole gist of the war minerals bill? It was to protect the man that we were going to get to produce these minerals, against that very loss by the sudden

page of the war, by authorizing contracts for two years. It was even debated upon the floor that one day before the war stopped, under the original $50,000,000 bill, a contract might be made for two years, so that there would be the Government operating and paying, if necessary, money and purchasing ore for one year and 364 days after the war stopped because the day before the war stopped, under that bill, a two-year contract would be made by the Government. Now that was the very object of the $50,000,000 bill. Senator Smoot says here that he is opposed to that object, but subsequently he sees the error of that position. As a practical man he has gone into the fact, and he sees it, so subsequently what does he do? He agrees to a conference report that not only is broader than the original thing that he objected to, but specifically says that you may consider losses that were occasioned by expenditures either 'for or upon.' Can you conceive of any stronger language? I would say: 'You are my agent. I am going to give you written authority to go out and I am going to back you up and authorize you to make expenditures for or upon property.' Now, I come along later and I say: 'Yes; you went and put up an office in New York City. I can stand that, but when you went out and spent the money to do the main thing that I wanted you to do, to get hold of the ore by purchasing the legal record title, or getting a lease on it—no; I can't stand that. I repudiate that. You didn't have any such authority from me.' Such a suggestion and such an interpretation is repulsive to every legal mind."

And concluding the discussion, at page 557, he said:

"I was frank in stating that we had liberalized the proposition by simply putting on the broad proposition that the Secretary of the Interior

should be authorized to do equity, and that we would only throw certain broad restrictions around him, and that inasmuch as we were going to do equity, I myself, in order that there might be a protection to the Government against that wide-open liberal provision, thought that we should have a provision in there that would authorize the Government to sue in case of a fraudulent claim put over by such an interpretation."

Having, at page 558, been asked a question as follows:

> "Why was the provision put in that no claim would be paid for land purchased for purely speculative purposes? What did you mean by that if you didn't intend in the original act to allow for property legitimately purchased?"

He answered as follows:

> "The inverse of a proposition is always stated by the direct statement of it. In other words, if I say that you shall not stay in the room, that is another way of saying that you shall get out of the room, and if I say that you shall not allow for speculative investments, that is an affirmative declaration that you may allow for investments not speculative. It doesn't take a lawyer to see that."

This history shows not only that the doubt stated by the Attorney General referred to another statute, but that Senator Smoot later understood the situation and agreed to language equally as broad, and, we believe, broader, than the original language to which he objected, and that the whole was protected by the provision against speculative investments.

The Act of March 2, 1919, was passed and approved, and Section 5 is quoted in the petition herein.

Congress Condemned the Action of the Commission Appointed by the Secretary of the Interior.

Reference has been made above to the hearings entitled H. J. Res. 170. After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the amendment to the War Minerals Act. This report criticised severely the former commission for its illiberal treatment of claimants, and said:

Findings of Committee.

> "The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent. Its interpretation and application of the provisions of the Act and the application of the provisions of the law to the facts."

The report further declared that if the language of the Act was interpreted as the courts of the country interpret such legislation, "*just and equitable*" settlements could be had of every legitimate claim.

Following this the report cited the cases requiring a liberal construction of this remedial statute.

One result of this investigation and report was the Act of November 23, 1921, 42 Stat. 322, which is material only as showing that the Congress liberalized the law.

After the passage of the Act of November 23, 1921, relator and others claiming losses because of the

purchase of property, believing that the Congress had indicated an intention for more liberal terms, again appealed for an allowance to the Secretary of the Interior. Later this was again denied and in order to test the question, Logan Rives filed in the Supreme Court of the District of Columbia, in 1923, a petition for a writ of mandamus. This court held that the writ should issue and that purchase of property items were allowable. An appeal was taken to the Court of Appeals of the District of Columbia and on January 7, 1924, the Court of Appeals sustained this court, holding that relator Rives, similarly situated to the respondent here, was entitled to have the writ issue and to be paid an allowance for his losses for purchase of property.

While this decision stood, and on February 18, 1924, but little more than a month after the decision of the Court of Appeals, the Secretary of the Interior sent a communication to the Chairman of the appropriate Committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia in the Rives case and then proceeded to show that of the $8,500,000 originally appropriated and allowed for claims that would be awarded for items other than the purchase of property and interest on borrowed money, there would remain only the sum of $389,337.38, to meet:

(a) $3,062,867.50 claimed for losses on purchase of property;
(b) $206,320.30 for interest price on borrowed capital;
(c) $453,608.54 for purchase of mineral rights.

The Secretary concluded his statement by saying:

> "This communication is being sent to the chairmen of the Appropriation Committees of the Senate and House and to the Chairmen of the Mines and Mining Committees of both branches of Congress.
>
> "Will you not confer and give me a reply at your earliest convenience?
>
> "Very truly yours,
>
> (Signed) "HUBERT WORK."

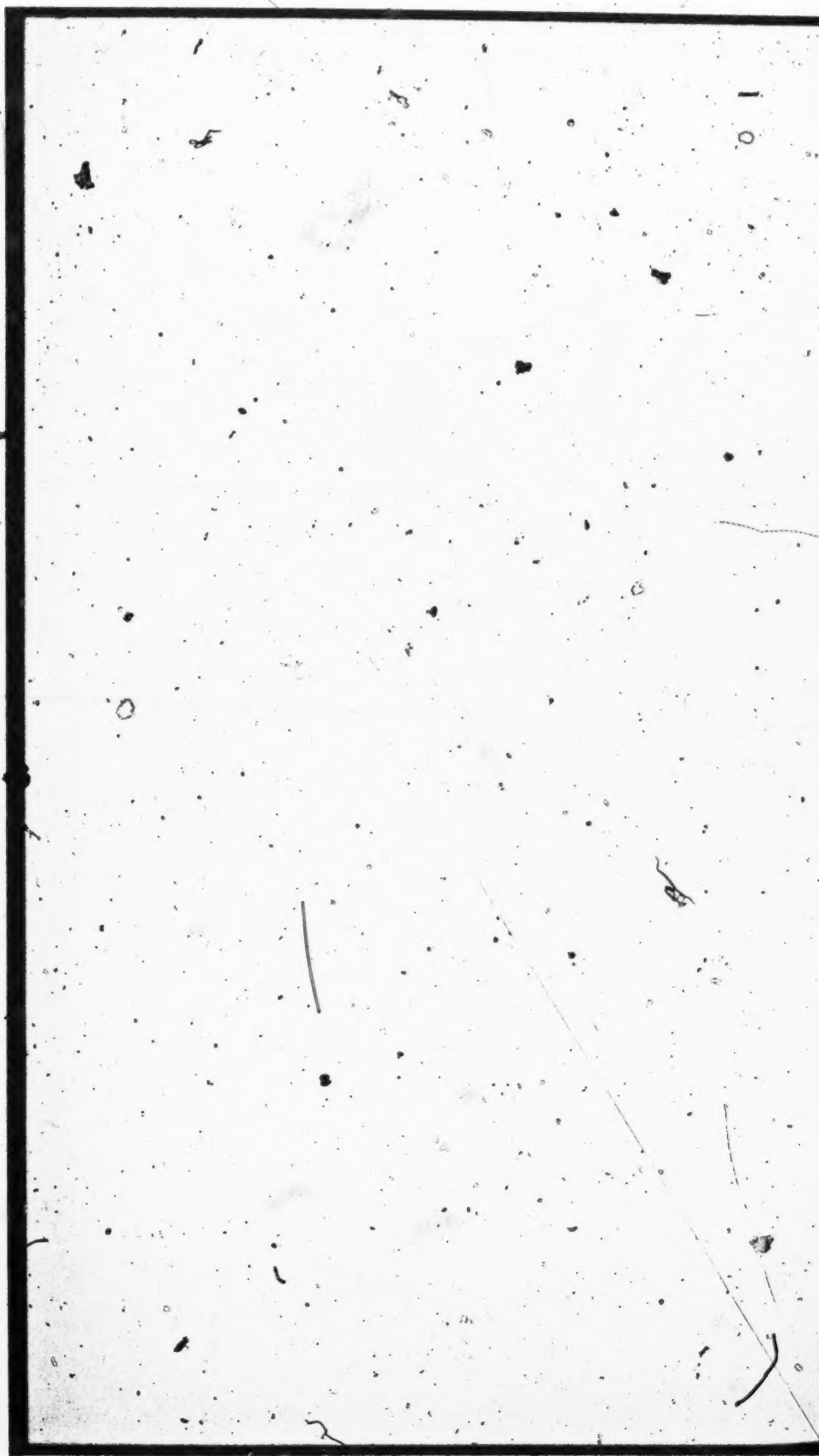
For complete letter and report of the Committee, see Calendar No. 306, 68th Cong. 1st Sess. report No. 292, dated March 18, 1924.

Act of June 7, 1924.

The Supreme Court of the District of Columbia and the Court of Appeals of the District having decided that purchase of property was an allowable item, the Secretary of the Interior, Mr. Work, having notified Congress that the appropriation was inadequate if such items and the item of interest on borrowed money were allowed, the Congress, on June 7, 1924, struck the limitation of $8,500,000.00 from the Act, and left in force the original appropriation of $50,000,000.00.

While it is true that this Court held that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia had no jurisdiction and therefore reversed such courts, the fact that Congress, with a knowledge that if the decisions of the District courts stood more money would need to be appropriated, made such an addi-

tional appropriation shows that Congress acquiesced in the decisions of the District Supreme Court and of the Court of Appeals.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner.

v.

THE UNITED STATES OF AMERICA, EX REL., THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,

Respondent

BRIEF FOR RESPONDENT

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IN THE

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v.

THE UNITED STATES OF AMERICA, EX REL., THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,

Respondent

BRIEF FOR RESPONDENT

JURISDICTION

Construing the Act of February 13, 1929, under authority of which this suit was filed, according to its terms as giving jurisdiction to decide the statutory questions here involved and to enforce such decision by requiring the Secretary of the Interior to comply therewith, this Court has jurisdiction of this writ.

If it were true, as argued by Petitioner, that such Act merely authorizes the courts of the District of Columbia to express a legal opinion, leaving the Secretary discretion in the application thereof, this Court would lack jurisdiction of this proceeding.

Federal Radio Commissioner v. General Electric Company, 281 *U. S.* 464, 469;

Massachusetts v. Mellon, 262 *U. S.* 447;

Texas v. Interstate Commerce Commission, 258 *U. S.* 158, 162;

Ex Parte Bakelite Corporation, 279 *U. S.* 438, *at* 454, *note* 14.

APPENDIX

The detailed legislative history in both houses of Congress is long and complex. We have printed as an Appendix to this Brief a review of such of this legislative history as relates to the issue here, although we consider the meaning of the words used in the Act itself so plain that no reference thereto should be made. If it is referred to at all, it must be followed from beginning to end in order that a mere chance opinion stated in an informal debate and subsequently changed should not be taken from its context and given a distorted meaning.

THE ISSUE

The writ of certiorari herein was granted upon the petition of the Secretary of the Interior and the sole issue is one of statutory construction. A demurrer, filed in the trial court by Respondent, to the petition of Petitioner, defendant in the trial court, raises the question.

The War Minerals Relief Act of March 4, 1925, authorizes the Secretary of the Interior to reimburse "such net losses as have been suffered * * * by reason of producing or preparing to produce" certain war minerals. The question is whether this phrase includes net losses resulting from the purchase of real property. The Respondent contends that it does include such losses, and the decision of the Court of Appeals of the District of Columbia sustained that contention. See *United States ex rel. Vindicator Consolidated Gold Mining Company v. Wilbur*, 63 App. D. C. 69, 47 F. (2d) 422 and record 22.

Summary of Argument.

1. As a matter of law money expended for the purchase of real estate in accordance with the Act of March 2, 1919, and lost is a "net loss," "suffered" and it is the duty of Petitioner "to adjust, liquidate and pay such net losses."

2. The Act of 1919 is free from ambiguity and legislative history thereof is not material; but, if such history be examined it supports the construction stated above.

3. Under the Act of February 13, 1925, courts are empowered to decide all "questions of law" here involved, to certify to the Petitioner their judgments and decrees construing such legal questions and Petitioner then "shall proceed with the final adjustment of" (the claim of Respondent) "in accordance with the law as construed."

CHRONOLOGICAL STATEMENT OF THE CASE

A. The Applicable Statutes

After the United States on the 6th day of April, 1917, became a party to the great war, there was urgent need for many minerals some of which were not ordinarily produced in the United States in sufficient quantities to meet such need. Therefore, the Congress deemed it wise to enact legislation that would stimulate the production of such minerals. Among these minerals was chrome.

In pursuance of this purpose, the Congress, by Act approved October 5, 1918, provided a means for encouraging the production, conserving the supply, and controlling the distribution of certain minerals, including chrome. This Act, the material parts of which are copied in an Appendix filed herewith (pp. 2 ff.), recites this purpose, authorizes the President to purchase or take over the means of meeting the needs of the Government, and provides that just compensation,* determined by the President, shall be paid. An appropriation of $50,000,000 was made.

The [illegible] effective date of this Act was so near the Armistice and came at a time when the Executive Department probably knew that the Armistice was made, it was never resorted to; but during the pendency in the Congress of that Act and prior to its passage and approval the President and the several

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* The ascertainment of which is a judicial question. *Charles River Bridge v. Warren Bridge*, 36 U. S. 11 Pet. 420, 571; *Monongahela Nav. Co. v. United States*, 148 U. S. 312, 327.

departments of the Government were doing all they could to stimulate production, urging and inducing that those who would and could make every possible effort to increase the production of these ores.

Many patriotic citizens, including the Respondent here, yielded to the demands of the Government, invested money, made expenditures and increased production beyond the needs in the United States after the termination of the war. To meet the obligation of the Government resulting from these efforts of the Executive Department, and as supplementing the Act of October 5, 1918, the Congress passed the Act of March 2, 1919. This Act was amended November 23, 1921, and February 12, 1929. These several Acts are printed in our Appendix filed herewith (pp. 23, 27, 31, 39).

Summary of Applicable Statutes

The principal substantive clause of the Act of 1919 directs the Secretary of the Interior to adjust, liquidate, and pay * * * net losses * * * sustained by any person, firm, or corporation by reason of producing or preparing to produce * * * copper, but such "losses" must have resulted from expenditures money "in good faith" and when so expended the claimants "shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to * * *," and the Secretary "*shall* make such adjustments and payments * * * as he shall determine to be just and equitable."

A review of the Secretary's final decision is provided (Act February 12, 1929, Appendix 40) "upon

any question of law," but on "all questions of fact" his decision "shall be conclusive and not subject to review by any court."

Payments, as said in the original Act, shall be made "from the funds appropriated by said Act of October fifth," 1918 and said funds "shall continue to be available for said purpose"; (a limit of $8,500,000 was originally fixed but later by Act of June 7, 1924, Appendix 31, the original appropriation of $50,000,000 was restored).

No claims, it was stated in another proviso to the original Act, could be "allowed or paid * * * unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred * * * were made in good faith for or upon property containing * * * chrome." "And no profits of any kind * * * and no investment for merely speculative purposes shall be recognized * * *."

Applying the Act of 1919 and these amendments to the particular facts in this case, these may be reduced to this statement:

If one who in good faith expends money or incurs obligations in producing or preparing to produce chrome, thereby suffers losses, his net losses shall be adjusted and paid, but profits and speculative investments are denied consideration in determining such losses.

Respondent Complied With the Terms of the Statute

Respondent filed its claim with the Secretary of the Interior showing that it complied with the Act

in every respect and was given an award; but the moneys lost by Respondent as the result of having purchased property that came within the description of the Act were deducted from the award and no allowance therefor made. The Secretary exercised his discretion as to the facts and determined "a loss on (R. 5) property $16,259 (R. 6)," but erroneously deciding the question of law, has said "this amount has been disallowed." (See statement near bottom page, R.6.) The question of law here, therefor, is: Should "this amount have been disallowed"?

About the time of that ruling one Logan Rives (who had suffered net losses by reason of the purchase of property) having been denied allowance therefor, filed his suit by mandamus in the Supreme Court of the District of Columbia. That Court ordered the issuance of the writ and an appeal was taken to the Court of Appeals. On January 7, 1924, the Court of Appeals affirmed the Supreme Court of the District and held that losses resulting from the purchase of property were properly allowable. *Work v. United States ex rel. Rives*, 54 *App. D. C.* 84, 295 *Fed.* 225. Shortly thereafter, and on the 13th of February, 1924 (Calendar No. 306, 68th Congress, First Session, report No. 292, dated March 18, 1924), the Secretary of the Interior wrote to committees of the Congress calling attention to the fact that if the decision of the Supreme Court of the District and of the Court of Appeals in the Rives case and in a case involving interest paid on borrowed moneys stood, that the appropriation was inadequate (Appendix 29).

The committee of the Congress having received the letter of the Secretary dated, as aforesaid, February

18, 1924, acted thereon, in the report referred to above, dated March 18, 1924, and called attention to the fact that the $8,500,000 to which amount the original appropriation had been reduced, was inadequate and a new law was recommended. By Act approved June 7, 1924 (Appendix 31), the Congress struck the limitation, leaving in force the original appropriation of $50,000,000.

The Rives case having reached this Court, *Work v. Rives*, 267 *U. S.* 175, it was held that the Secretary of the Interior had an uncontrolled discretion and that courts had no jurisdiction in the absence of an abuse of that discretion to reverse the Secretary either on questions of law or on questions of fact. The Court of Appeals and the Supreme Court of the District were, therefore, reversed and the cause dismissed.

The matter was again taken up in Congress and the Act of February 18, 1929, was passed. This Act (Appendix 39), gives courts jurisdiction in this and like cases "to review the final decision of the Secretary of the Interior upon any question of law," requiring the Secretary to obey such decision and leaves the Secretary a discretion "on all questions of fact."

B. This Proceeding

After the passage of the Act of February 18, 1929, and as authorized by that Act, Respondent filed its petition for review and mandamus in the Supreme Court of the District. A response, later an answer, was filed by the Secretary with exhibits attached thereto showing the facts, and the cause was deter-

mined by the Court by demurrer to plea and answer. The District Supreme Court held that the Secretary of the Interior had correctly decided the law. An appeal was taken to the Court of Appeals of the District where the trial court was reversed in an opinion by Mr. Justice Wheat (R. 22) and thereafter, on petition of the Secretary, this writ of certiorari was granted.

C. Legislative History

The Acts of 1919 and of 1929 should properly be considered in connection with the Acts of 1918, 1921, and 1924, all copied in the Appendix and referred to above, but mere legislative discussion has no place here.*

Petitioner, however, in his petition for certiorari and to a lesser extent here, makes reference to certain statements made in the Congress; and, that this Court may have full and accurate information with reference thereto, we have printed and file herewith an Appendix a reading of which will give such information.

Petitioner in his petition quoted certain language used by Senator Smoot in an informal discussion in the Senate and in his brief gives a few sentences from a statement made by Congressman Robsion (see his brief herein, pp. 11, 12) in reporting the Act of February 18, 1929.

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* *United States v. Missouri Pacific R. Co.*, 278 U. S. 269; see also *Railroad Com. v. C. B. & Q. R. Co.*, 257 U. S. 563, 588; *Hamilton v. Rathbone*, 175 U. S. 414, 419; *United States v. Hartwell*, 6 Wall. 385.

This error based on a misunderstood casual statement of Senator Smoot had its beginning as early as 1919 (Hearings of Committee on Mines and Mining, H. J. Res. 170, pp. 150 ff.) and has not yet been overtaken by the truth. In a claim heard May 26, 1919, a Commission in the Department of the Interior quoted the statement of the distinguished Senator (id. 151) and concluded therefrom "that it was the intention of Congress not to allow for the purchase price of property" (id. 152), although in the same case office expenses in New York were allowed.

In our Appendix filed herewith we have shown that not only did Senator Smoot change his views but later acquiesced in a bill containing the language to which he objected and that the bill which finally passed as the Act of March 2, 1919, contained language more comprehensive than that to which Senator Smoot addressed his quoted remarks. This Appendix also shows (pp. 47 ff.) that the Committee considering the Act of February 13, 1929, and the representatives of the Department of the Interior definitely knew and certainly intended that the Act should give courts the specific power and authority again to decide that as a question of law the Secretary should pay losses for the purchase of property and that all discretion to disobey the law thus to be decided by the courts was taken away from him, the courts being given definite authority to certify to the Secretary their decisions as to the question of law.

We further showed in the Appendix that the Committee of the House (pp. 26, 27) found that no clarifying legislation was needed but that—

"The language of the act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim. * * * For the reasons above stated the committee has not thought it necessary to amend the original act." (Appendix 27.)

ARGUMENT

The issue stated above, page 2, should, it is respectfully submitted, be determined by deciding that "net losses" incurred from the purchase of property should be paid and the Court of Appeals of the District of Columbia affirmed.

No Ambiguity in the Statute

The statute is a simple one, not difficult to understand, and the only ambiguity that has arisen as to its meaning results from an extraneous circumstance not fully understood by the Secretary or the Attorney General each of whom used it as a basis for an opinion. Disregarding, as we think should be done, this extraneous circumstance, let us look to the statute.

The statute requires the Secretary of the Interior to adjust, liquidate, and pay net losses. In this case the Secretary found a net loss but refused to liquidate and pay the same because he said as a matter of law that losses resulting from the purchase of property were not proper items for liquidation and payment. The statute is mandatory in form. The first

paragraph refers to the Secretary's duty to "adjust, liquidate and pay." Later the Secretary is commanded to make adjustments and payments as he shall determine to be just and equitable. These words demand a liberal construction.

The Statute Should Be Construed to Effect Its Purpose

The law under which Respondent claims as said by this Court in construing another statute having a similar purpose

> "is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment."
>
> *Stewart v. Kahn*, 78 U. S. 11 *Wall.* 493, 504.

"Just" as was said by Mr. Justice Brewer, in *Monongahela Navigation Company v. United States*, 148 U. S. 312, 326, is an "emphatic" term, when used as in the controlling statute here, and means that the compensation

> "must be a full and perfect equivalent for the property taken."

Again, in the same case (p. 325), the learned justice said:

> "And in this there is a natural equity which commends it to every one. It in no wise detracts from the power of the public to take whatever may be necessary for its uses; while, on the other hand, it prevents the public from loading upon an individual more than his just share of the burdens of the government, and says that when he surrenders to the public something more and different from that which is exacted from other

members of the public, a full and just equivalent shall be returnable to him."

Construed as this Court says the statute shall be construed, the main substantive clause of the statute definitely authorizes the payment of net losses suffered by reason of producing or *preparing to produce* chrome. The claim of Respondent falls within this authorization.

Provisos of the Statute Support Respondent's Contentions

There are several provisos in the statute, only three of which deal with the substance of the relief as distinguished from administrative detail. These three may be regarded as exceptions to the general command and are:

(1) "No claim shall be allowed * * * unless it shall appear to the satisfaction of the Secretary that the expenditures so made * * * were made in good faith for or upon property which contained * * * chrome."

The good faith of Respondent and that the property contained chrome were found and the fact that an expenditure was made "for" property was also found. So the Secretary was satisfied of each of the requirements of the quotation above.

(2) No profits of any kind shall be included.

Here no profits are claimed nor were any found to exist.

(3) No speculative "investments shall be recognized."

This negative statement implies a positive command to recognize all investments not speculative. Here there was no claim that there was any speculative investment. The investment was found to have been made for the purpose of producing and preparing to produce chrome.

Buying Lands Containing Minerals Is Preparing to Produce

The main substantive clause of the statute thus states the broad intention of Congress to pay *all* net losses incurred in furnishing war materials at the request of the Government; to indemnify claimants both as to original cost, i. e., "preparing to produce," and the operating cost and all correlative expenses, i. e. "producing." The wording is clear and unambiguous, calls for no construction, and needs only application. What more essential step could there be in preparing to produce than the acquisition of the land in which nature had deposited the raw material? What suggests excluding from relief those who took the necessary preparatory step to obtain the right to produce by the purchase of the deposit? This situation is clearly one Congress proposed to relieve and the language of the statute dissociated from extraneous circumstances, is so plain that it would seem that further discussion would be unnecessary.

"For" Means in Consideration of a Purchase

The language of the first proviso discussed above strengthens this meaning. The word "for" occurring in the phrase "for or upon property" is contained in an exception and as neither Respondent nor its claim

is within that exception and as Respondent's cause is clearly included in the positive right to net losses, perhaps a discussion of the meaning of this word is unnecessary. However, while it has different meanings in various settings, the lexicographers all agree that one—and probably its principal—meaning is *compensation made or offered in exchange for something*. Illustrations are used, such as that in the Standard Dictionary, which is:

"I gave a dollar *for* it." *

Not only does this proviso serve its ordinary function, it emphasizes the affirmative scope of the enacting clause. It states "expenditures * * * made * * * FOR *or upon* property." It was obviously the intention of Congress to make claimants *whole*, both as to the original purchase price and as to subsequent development and operation. The claimant herein made expenditures "for" real property. It also suffered deficits in the operations "upon" its property. Its losses in *both* respects come within the statute.

This, it is submitted, is the natural and plain meaning of the proviso in the setting in which it is used. There is no ambiguity and no occasion for construction.

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* Text book writers use similar illustrations. In 27 C. J. p. 791 "for" is defined as meaning "in consideration of." Other definitions are discussed in *Work v. United States Ex Rel. Rives*, 54 *App. D. C.* 84, 295 *Fed.* 225, *at* 227; *Gardner v. Corson*, 15 *Mass.* 500, 503; *Norton v. Woodruff*, 2 *N. Y.* (2 *Comst.*) 153, 156.

"For" and "Upon" Each Has a Meaning

Even if we "conjure up conditions to raise doubts" and attempt a word by word dissection of the meaning of the phrase "for or upon property," our conclusion is strengthened. It is presumed that by the use of *two* prepositions instead of one Congress intended that each should add something to the meaning of the phrase. The word "for" must have one meaning, and the word "upon" must have another. If we adopt the contention, however, that by using "for" Congress meant only "for the benefit of" and intended thereby to include only expenditures off the property, such as tram lines, power lines, roads, loading platforms, etc., we find that Congress used two words where one would suffice; for the preposition "upon" has been judicially held to cover such expenditures. It has long been the rule, established in many mining cases, that labor and improvements are deemed to have been *on or upon* a mining claim where made for its development, that is, to facilitate the extraction of the metals, although such labor and improvements may in fact have been at a distance from the claim.

In *St. Louis Smelting Company v. Kemp*, 104 *U. S.* 636, 655, (1882), this Court considered Sec. 2324, R. S. 17 Stat. 91 which provides that there shall be annually expended, in labor and improvements *on* the claim, $100.00. In discussing whether the labor and improvements within the meaning of the statute should be deemed to be *on* the mining claim, although performed at a distance from the claim itself, the Court, p. 655, said:

> "Labor and improvements within the meaning of the statute, are deemed to have been had

on a mining claim, whether it consists of one location or several, when the labor is performed or the improvements are made for the development, that is, to facilitate the extraction of the metals it may contain, though in fact such labor and improvements may be on ground which originally constituted only one of the locations, as in sinking a shaft, or be at a distance from the claim itself, as where the labor is performed for the turning of a stream, or the introduction of water, or where the improvement consists in the construction of a flume to carry off the debris or waste material."

To the same effect are the cases of *Chambers v. Harrington*, 111 *U. S.* 350, 353, (1884); *Copper Glance Lode*, 29 *L. D.* 542 (1900), and cases cited.

Expenditures off the property but for its benefit are covered by the word "upon" in this proviso. Therefore, unless the word "for" is given its usual meaning in this context, that of "in consideration of," there will be a failure to ascribe a different meaning to each of the words advisedly used by the Congress.

"Invest" Connotes Purchase of Permanent Property Such as Land

The significant word used in another of the provisos which we have designated (3) above is the word "invest." This proviso is used for the purpose of preventing speculative investments, and, we repeat, is an affirmative statement that losses from investments other than speculative shall be paid. The definition of the word "invest" is well known and, as said by this Court, "implies a laying out of money or

money's worth." *LaBelle Iron Works v. United States*, 256 *U. S.* 337, 388.

An "investment" connotes the purchase of property, and is particularly applied to the purchase of real estate, as distinguished from the purchase of quickly worn out machinery and equipment for the operation of a mine. Money might be "expended" for such personal property but seldom (and then improperly) would it be referred to as an "investment." We commonly think of an investment as being an outlay for something lasting and permanent. Real property was just as essential to the preparation for and production of minerals as was personal property.

Loss of the Value of Land a Certain Loss

If it were true that losses sustained in the purchase of real property are difficult to compute and thus, possibly, uncertain, it would be irrelevant to this inquiry. Mere uncertainty does not make a purchase "speculative." Congress excluded investments for speculative purposes; but not losses "uncertain in respect of their amount." * The computation of such losses, in such manner "as he shall determine to be just and equitable," has been left to the Secretary.

As a matter of fact, there is no difficulty in determining the loss from an investment in real estate or

---

* *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 *U. S.* 555, where this Court said: "The rule which precludes the recovery of uncertain damages applies to such as are not the certain result of the wrong, not to those damages which are definitely attributable to the wrong and only uncertain in respect of their amount. *Taylor v. Bradley*, 4 *Abb. App. Dec.* 363, 366, 367, 100 *Am. Dec.* 415."

mining property. Loss from decline in value through obsolescence or falling off of demand is recognized in other branches of the law, even though title is retained.* The present value, if any, of the property may be determined and the "loss" established with reasonable certainty, which is all that can be required. Here the Secretary computed "a loss" (R. 5) which he fixed at $16,295.00 (R. 6) and which he deducted from the total losses (R. 12).

REPLY TO PETITIONER'S BRIEF

It is believed that the foregoing statement of the case and of the law entitles Respondent to an affirmance of the judgment of the Court of Appeals. Notwithstanding, we shall briefly discuss the position of Petitioner.

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* Such are the rulings of the Commissioner of Internal Revenue and of the courts which have reviewed his decisions. A sale of assets is an easy method of determining loss, but such sale is not an absolute prerequisite.

In *Milton H. Bickley*, 1 B. T. A. 544, 547, the Court said: "As the corporation has no funds or assets of any kind and entirely ceased to do business in 1919, and as the stock had no value and could not be disposed of at any price, it was entirely worthless at that time. We are of opinion that the deduction of the amount of the two notes as worthless debts, and of the loss in the stock should be allowed in the year 1918."

Treasury Regulations recognize an exception to the rule requiring a sale or other disposition of property in order to establish a loss. See Treasury Regulations 45, Articles 143 and 154. These are stated and discussed in an annotation, 11 A. L. R. pp. 507 and 508.

Petitioner's Admissions of Record Not Consistent With His Argument Here

In the petition for a writ of certiorari (R. 5, 6) there are five specifications of error. The first three of these are based upon the claim that Respondent retained title to the property purchased. So far as this record shows this claim was never made by the Secretary prior to the answer filed in this cause. (R. 16 ff.)

In the response of the Secretary of the Interior filed March 15, 1929 (R. 4), he states that this cause presents

> "the sole and only question * * * whether or not one who was engaged in producing or preparing to produce chrome and sustained a net loss by reason of expenditures *for* the purchase of property * * * is entitled to have such loss reimbursed."

He further says:

> "* * * this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions." (R. 4.)

In this response the Petitioner herein, the Honorable the Secretary of the Interior correctly stated the issue and it will be noted that he uses the word "for" in describing the purchase of property. This position of the Secretary was fully sustained by the action of his office and of his predecessors.

On April 14, 1922, reviewing this claim, the commissioner in charge, stating the issue, said:

> "* * * there was but one question to be decided in this review, namely, whether the deduction which the former commission made *for the purchase of property was proper*—"

And in concluding his review:

> "I have no doubt whatsoever that the former commission was right in holding this to be purchase of property and not an allowable item." (R. 10.)

On May 15, 1922, the acting Secretary, rendering an opinion on appeal by Respondent here, said:

> "The payments made *upon* the lease and purchase price of the mine by Mr. Wood and his successor in interest are shown to be as follows";

then the conclusion is made—

> "Total payment on purchase price of mine, $16,259." (R. 11.)

In September, 1922, the First Assistant Secretary on reconsideration said:

> "It is clear beyond question that the expenditure aforesaid represents the purchase price of the mine." (R. 12.)

From the foregoing it is definitely shown that the question of retention of title was not considered by the Secretary. However, when Petitioner filed an answer to the petition, we find for the first time the claim made that retention of title was a relevant fact. This substituted answer says:

> "It is admitted herein that money was paid by relator in the purchase of property and if the

court holds that losses were sustained thereby and are allowable in cases where claimant retains title, the amount thereof will be subsequently determined by the Secretary of the Interior." (R. 18.)

It is not contended that the Honorable Secretary, Petitioner here, did not have the right to file a new answer in conflict with his first response, but what we do contend and what the record definitely shows is that the answer by using the same exhibits as were used to the response shows that the first answer speaks the truth. Petitioner having made the exhibits part of his answer, the exhibits control when in conflict therewith.

The learned counsel for Petitioner in the brief in support of the petition for certiorari (page 11) stated that the questions presented are limited to two, and these two are similar to numbers 4 and 5 (petition page 6) of the Specification of Errors.

A similar fact to that now sought to be injected as an issue in this case appeared in *Work v. United States ex. rel. Rives*, 267 *U. S.* 175, where, at page 176, it appears that Rives had not sold his property but "the land had lost most of its value because of the armistice." This, however, did not impress this Court as governing the decision in any way.*

---

* As indicating that this claim that retention of title has something to do with the issue here made is an afterthought, it is interesting to look to the brief in the Rives case, above (See for right to refer to former case, *United States v. Canneries*, 279 *U S.* 553, 555). That brief was filed by the Honorable James M. Beck, Solicitor General, and the Honorable C. Edward Wright, attorney for the

Retention of Title Not An Issue

Although Petitioner on brief discusses this issue, there is no factual basis therefor. We may properly be permitted to repeat some brief portion of the record which Petitioner seems to have overlooked on brief. Petitioner in his response says:

Department of the Interior. It is of record in this Court and from that the following appears:

Page 5: "For the ruling had been, for reasons hereinafter discussed, that money spent in acquiring or purchasing real property or mining rights was not properly reimbursable under the relief act."

Page 7: "The Secretary did not dismiss so much of Rives' claim as involved the purchase price of real property on jurisdictional or any other ground. On the contrary, he took jurisdiction. He considered the item. He ruled against its allowance."

Page 10: "Congress did not intend to repay losses incurred in the purchase of real property and the plaintiff in error properly so construed the act."

In that brief it was claimed that inasmuch as the loss was admitted the case was in effect "a suit against the United States" and at page 18 this is said: "The Secretary's decision shows that we are advised of the amount of Rives' loss in his real estate transaction—$9,600. That has not been disputed by the plaintiff in error at any time."

At page 21 the brief, speaking of the Act of 1919, says: "It provided an appropriation of $8,500,000 to pay claims aggregating $18,131,493.30 (Senate Doc. No. 385, 66th Cong., 3d sess.). In no event were settlements and payments of these claims to exceed in the aggregate the amount appropriated."

And at page 22: "Rives is but one of several whose claims involve money paid for real property. Over $3,000,000 are involved. To include all such claims would require the expenditure of more than the $8,500,000 appropriated."

See above p. 10 when in 1919 purchase of property was denied with no reference to whether title was or was not retained.

"* * * the sole and only question finally determined by the Secretary of the Interior * * *" (R. 4)

is—

"* * * whether or not one who was engaged in producing or preparing to produce chrome and sustained a net loss by reason of expenditures for the purchase of property, to-wit, the property upon which the mine was located, is entitled to have such loss reimbursed under the provisions of said act." (R. 4.)

The agents of the Petitioner found "a loss on each property" (R. 5) and among the properties so included was "Property, $16,259" (R. 6). Of these losses so found to have been suffered the Petitioner through the same agents "disallowed property $16,259.00" (R. 6), and gave as an explanation therefor the statement of Senator Smoot (R. 7). This statement as has already been shown, was not a reason but the pertinent fact here is that "retention of title" had nothing to do with inducing the Petitioner to refuse Respondent pay for his found "loss on * * * property." The same "deduction" of this "loss" is shown record 8, and "purchase of property" was again held "not an allowable item" (R. 10), and the "Acting Secretary" who signs this brief in this Court held that expenditures for purchase of property "are not reimbursible under the law" (R. 12). The first time that the record in this case shows a claim that retention of title was relied on appears in the answer herein filed September 24, 1929 (R. 17), and such claim then and now made is in conflict with the facts shown of record and undisputed (R. 5, 6).

The record as quoted above shows a loss "on each property" and on one "property" the amount is stated to be $16,259. Notwithstanding this record, Petitioner in his brief (p. 20) says:

> "* * * it does not appear that any proof was offered by the respondent to show that it had *sustained any* loss."

It is hardly necessary to say that an error in a brief cannot change a fact in the record.

Whether or Not Discretion Is Left to Petitioner In Applying the Law Does Not Arise Here

It seems clear that the Petitioner must obey the law when courts announce what is the law and "certify" their "final judgment or decree" because the statute specifically commands that he "shall proceed with the final adjustment of said claim in accordance with the law as construed by the Court * * *" (Act 1929, Sec. 4, Appendix 40).

Respondent (R. 3) prayed for no more and the judgment of the Court of Appeals grants no more than this statutory right, and this right in no wise hampers the right of the Secretary to determine issues of fact.

While we have deemed it proper to discuss the action of the Petitioner in this case and the action of the predecessors of Petitioner in other cases, we do not believe that the issue discussed on Petitioner's brief wherein Petitioner claims (his brief p. 21) that the Court of Appeals has directed him "to find the facts and to make an allowance in accordance with that finding" arises in this case. As we construe the

opinion of the Court of Appeals and what we sought in our petition in the Supreme Court of the District is a finding of law that moneys lost in the purchase of property should and must be allowed. The specific amount of the loss, of course, is left for the Secretary and there is no contention that the Secretary's discretion as to facts should be in any wise limited. The Secretary himself seems to agree with us because in his answer hereto (R. 18) he says that the amount of our claim "will be subsequently determined." We believe that he has already determined it and we do not anticipate that he will make, although authorized so to do, a different determination than that he and his predecessors have heretofore made. He has determined the amount of the loss. He might review that determination, but we do not believe that he will do so in view of the frequent redetermination of that amount. However, we do not see that this question arises here. All the Court can do is to decide what the law is, to certify that decision to the Secretary, and when that certificate is made the Secretary must proceed in accordance with the law as announced by the Court.

The Only Issue Arising on the Record

From the foregoing it follows that this Court is called upon to decide the simple question of law, that is, briefly summarized, Whether or not losses growing out of the purchase of property shall be adjusted and paid. A decision from this Court on this question would leave to the Secretary discretion as to the facts but would leave him no discretion to decide whether or not he would comply with the law as announced by the Court.

The Meaning of the Act of February 13, 1929

The claim of the Secretary that the Act of February 13, 1929, if sound would leave him with the same discretion as theretofore, and such claim rests on the untenable ground that the Congress passed a meaningless statute. The former decision of this Court in the Rives case shows the necessity for the Act and the Act shows a purpose definitely to commit to a judicial determination the meaning of the statute approved March 2, 1919. The Act of October 5, 1918, provided for "just compensation," that of March 2, 1919, in order to award just compensation directed the payment of all net losses suffered. Reports of Congressional Committees and the Acts of November 23, 1921, and of June 7, 1924, show that the Congress sought to see that such losses were paid and the Act of February 13, 1929, definitely recommitted, with the consent and approval of Petitioner, *the issue of law* to the courts that had theretofore held the losses here suffered should be paid.

As the Petitioner discusses *Work v. Rives, supra,* we shall make brief reference to the opinion of this Court therein. This Court, page 181 of the opinion, refers to legislative history. We have hereinbefore and more fully in the Appendix hereto, given this legislative history and shown that the facts with refence thereto were inadequately presented to this Court. It should also be remembered that the decision in the Rives case, although this Court in an obiter dicta referred to legislative history, was based upon the lack of jurisdiction because the finding both of law and facts by the Secretary of the Interior, as the law then stood, was "conclusive and final." This

Court then referred to *United States v. Realty Company*, 163 *U. S.* 427, 439, and *Allen v. Smith*, 173 *U. S.* 389, 402, and Petitioner relies on the same cases here. The Act of October 5, 1918 (Appendix 2) gave a right to just compensation and the Act of March 2, 1919, being supplementary thereto merely added a new remedy. In the second of the cases cited above, it was held that the law there, and that is true here, was passed in recognition of a moral obligation and was not a *gift* by the Government.

What this Court said in the Rives case about discretion, final authority in the Secretary and that appeals to the Court were not allowed, referred to the conditions then existing. These conditions were changed by the Act of February 13, 1929, specifically to meet the decision in that case.

In the Rives case this Court quoted *Work v. United States, ex rel. Mosier*, 261 *U. S.* 352, 389, and called attention to the fact that the Secretary in that case "was not given discretion finally to construe" the statute. The Secretary here now by the Act of 1929 has no final discretion *to construe a law*. He may yet under the law and without any conflict with the decision of the Court below decide all issues of fact.

It is not contended, we reiterate, that the Secretary has been deprived of discretion *as to the facts*. That discretion is specifically retained.

The money was paid, says the Secretary, in the purchase of property, and, as shown above, he and all his subordinates, found that the cost of this property was lost. It is entirely immaterial whether or not the formal legal title is in Respondent or whether

that title has been disposed of. The fact that a thing is so worthless that it cannot be sold does not give it any value for any purpose.

Petitioner (Brief 12) claims that the Act of 1929 was not designed to change the construction placed upon the Act of 1919 and seeks to support this contention by a statement from Mr. Robsion. If this be true, why did Congress pass the Act of 1929? Mr. Robsion is entirely correct that the Act did not take away from the Secretary the *administration of the Act of* 1919. It did, however, take away from the Secretary his former right and discretion finally to determine *legal questions*. That is all the Act of 1929 does and that is all it needs to do in order to protect the rights of Respondent here.

Petitioner argues that the Congress had it intended to pay net losses for the purchase or lease of property would have said so in definite language. Had such an Act been passed it would have been unusual, and unjust. Had Congress said that payments for interest on borrowed money and payments for purchase of property should be allowed, the expression of these two items would have excluded all other items and would have left those with different kinds of claims without any remedy and with their rights determined against them by legislation.

Congress did the appropriate, wise, and just thing in giving the courts the jurisdiction to decide the rights of the parties affected by the Act of 1919 and definitely showed by the history of the legislation and by its extension of the rights of Respondent and others in like situation, that it believed that the legis-

lation passed in 1919 if properly construed and fairly administered would protect the rights of all parties. Believing this the committee said: "For the reasons above stated the committee has not thought it necessary to amend the original Act" (Appendix 26, 27).

Errors in Petitioner's Brief

Properly construing the record, we submit, fails to furnish factual support for some of the statements in Petitioner's brief herein. Petitioner says:

> "There is no indication in the record that the respondent proved that the property declined in value after purchase so that the respondent would suffer any loss as a result of the purchase." (Petitioner's brief, p. 8.)

The Secretary found "a loss on each property" (R. 5) including property loss of $16,259 (R. 6) which cost the same amount (R. 11).

The brief says "There was no indication that the property was entirely valueless" (Brief p. 9). The record found a loss of the total cost (R. 5, 6, 11).

The brief says:

> "* * * where the claimant retains title to the property purchased, the loss, if any, must necessarily be incapable of exact ascertainment." (Brief p. 16.)

If, as found and shown of record, the cost is found and the loss is found to be total, there is an "exact ascertainment" (R. 5, 6, 11).

The brief says:

"* * * it does not appear that any proof was offered by the respondent to show that it had *sustained any* loss." (Brief p. 20.)

But certainly the Secretary would not and did not find the loss without testimony (R. 5, 6, 11).

The Question of Law, Act 1919

However, stripped of verbiage and contradictions in the brief of Petitioner, Respondent's case is as stated, page 24 ante, and is one of statutory construction.

Petitioner's Argument from Statement of a Senator

One of the principal arguments of Petitioner, and the principal legal argument heretofore urged, is based upon the casual statement of Senator Smoot. That this is no legal basis for the conclusion sought by Respondent has already been demonstrated and further discussion thereof is unnecessary and Petitioner in his brief here has relegated to a note the reference to the casual remark of Senator Smoot.

No Acquiescence in Administrative Interpretation

It is also contended by Petitioner that the early determination by the Secretary that losses from real property purchased could not be considered shows a departmental regulation that should be persuasive if not conclusive. No such rule applies here. From the time Secretary Lane's Commission began to function the acts of the Department of the Interior in enforc-

ing the statute have been questioned by claimants, criticized by Congressional committees, reversed by some courts, and the Congress has enacted the amendatory and supplemental Acts of 1921, 1924 and 1929 for the purpose of changing the administrative action.

Only where the executive interpretation has been long continued, uniform and generally acquiesced in is it entitled to any consideration at all. Here, as said in *Merritt v. Cameron*, 137 *U. S.* 542:

> "*There is no such long and uninterrupted acquiescense in a regulation of a department, or departmental construction of a statute*, as will bring the case within the rule announced at an early day in this court, and followed in very many cases, to-wit, that in case of a doubtful and ambiguous law the contemporaneous construction of those who have been called upon to carry it into effect is entitled to great respect, and should not be disregarded without the most cogent and persuasive reasons."

There has been no "acquiescence" and we submit that the statute is neither doubtful nor ambiguous. Indeed there has been a continued effort on the part of the Congress to aid claimants in overturning the construction of the Department of the Interior. (Appendix 26, 27, 31, 39, 56, 57.)

CONCLUSION

Respondent suffered a net loss as a result of purchasing property necessary in preparing to produce chrome. The amount of this loss and the good faith of Respondent have been found by the Secretary of the Interior. A remedial Act of Congress authorizes the

Secretary to adjust and pay this loss. The provisos contained in the Act and the subsequent amendments emphasize the fact that this loss falls within the scope of the legislation and we submit that the decision of the Court of Appeals of the District should be affirmed.

Respectfully submitted,

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FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 66

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., THE VINDICATOR CONSOLIDATED GOLD MINING COMPANY,

Respondent

APPENDIX TO RESPONDENT'S BRIEF

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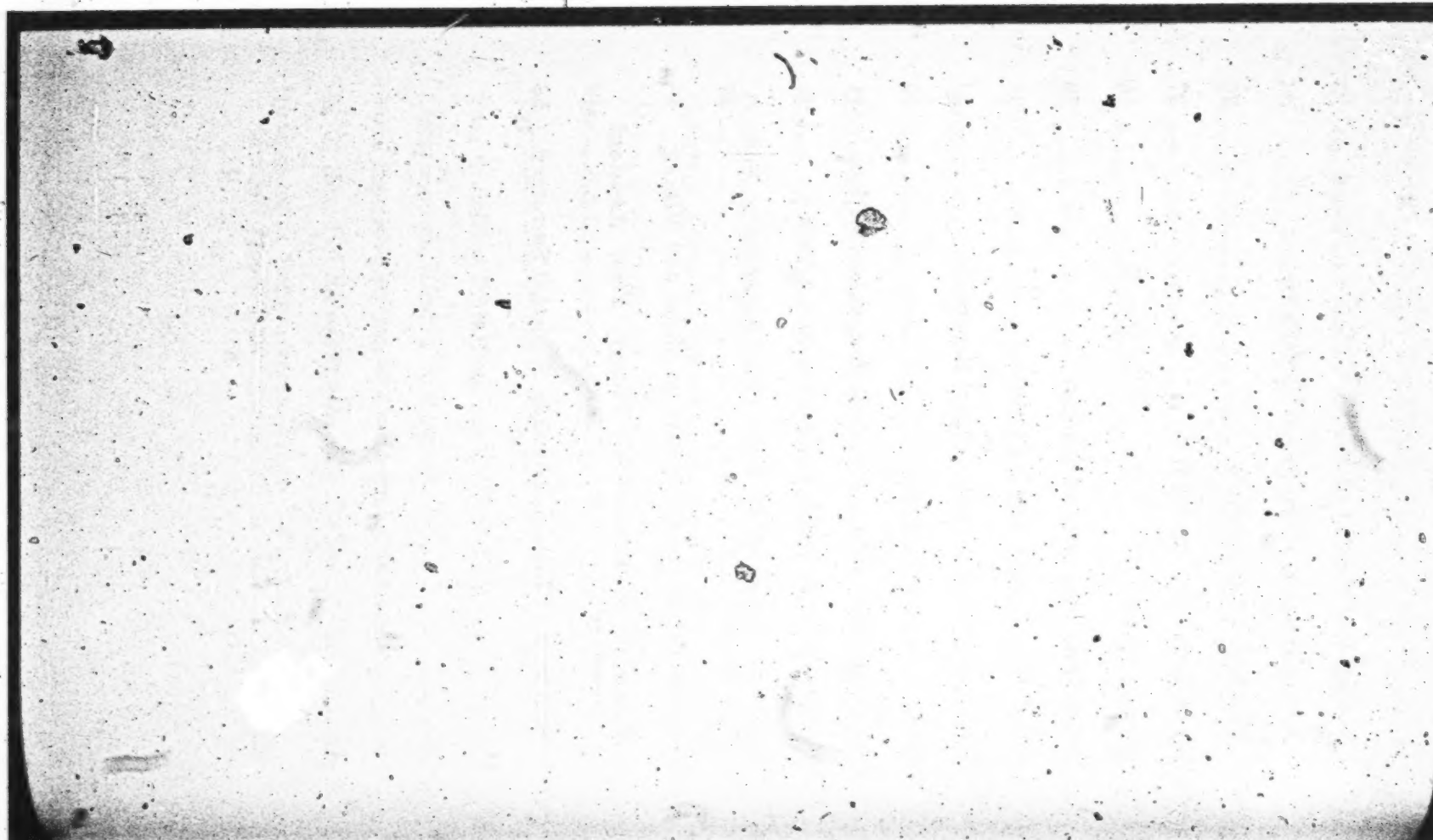

APPENDIX

LEGISLATIVE HISTORY

General Statement

While in our opinion there is no such ambiguity in the statute here for construction as justifies a resort to legislative history, we nevertheless present herewith a sufficiently comprehensive outline of such history to enable the court, if it should so desire, to examine it. An accurate statement of such history is perhaps necessary to meet incomplete and consequently misleading references thereto in the brief of the Petitioner.

A state of war having been on the 6th day of April, 1917, declared to exist between the United States and the government of Germany, the need for war minerals in this country, most of which were imported from abroad, became immediately imperative. At the same time it became apparent that the government could not and should not rely upon the continuance of such importations. Not only were such importations largely shut off due to the activities of the German U-boats, but our ships and those of our allies which could otherwise have been used in their transportation were required to carry soldiers and supplies to France. So we were forced to produce these minerals in this country.

How best to accomplish such production was one of the vital questions that confronted the govern-

[illegible] in the early days of the war. Large sums were devoted to advertising the needs of the government in this respect and in encouraging and stimulating immediate large-scale production of these minerals. Cabinet officers and other important agents of the Nation pleaded for such production. The question was discussed elaborately in Congress, beginning in the spring of 1918. The resulting bill was finally passed and approved October 5, 1918. This act was entitled:

Act October 5, 1918

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act

The act is printed 40 Stat. 1009, and following. In Section 1 thereof it is stated:

"By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production and to provide for an equitable, economical, and efficient distribution of the following-named minerals, substances, and articles, namely, [illegible] and [illegible] products, metals, alloys, [illegible] and components thereof, [illegible] explosives [illegible] as the President may, from

time to time determine to be necessary for the purposes aforesaid, and as to which [illegible] at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 *and* 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including just compensation under section three."

Sections 7, 8 *and* 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the act, which was upon the proclamation of peace by the President.

Sections 11 *and* 12 are not material to the issue here.

This act in effect would have authorized the President or his agents to enter into whatsoever arrangements were deemed necessary for procuring an adequate supply of these war minerals. Had the war continued, the President under this act would have been enabled fully to protect the men who answered the call of the Government to produce these minerals. However, as the act was approved so near the date of the Armistice, it was never resorted to.

With the cessation of war, the demand for these war minerals practically ceased, and the producers were faced with immediate and heavy losses. How to give "just compensation" (Section 3, Act of Oct. 5, 1918, *supra*) to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government, was the question then presented to Congress.

Legislative History of the Act of March 2, 1919

After hearings, and on the 23rd day of December, 1918, Senator Henderson introduced a bill entitled,

Title of Bill, Senate

"A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sustained by investments preparatory to production of war minerals mentioned in said Act."

This was called Senate 5234 and was referred to the appropriate committee.

Bills in the House

In the House on December 24th, 1918, Mr. Foster introduced an identical bill, known as H. R. 13498, and this was referred to the Committee on Mines and Mining of the House.

On December 7th, 1918, Congressman Dent introduced a bill in the House, known as H. R. 13274, the purpose of which, as expressed in the title, was, "To provide relief where formal contracts have not been made in the manner required by law." This bill purported to authorize the Secretary of War to adjust and pay claims under contracts with the government for war supplies, where in the rush and hurry of the war, the requisite formalities had not been complied with. The moral obligation of the government to reimburse those who had lost because they had complied with the demand of their country was recognized, and the House debated whether to give the administration of the relief to the Secretary of War or to a newly created commission. On January 9th, 1919, the House passed the bill substan-

tially as introduced, leaving the matter in the hands of the Secretary of War.

Progress of the House Bill in the Senate

In the Senate H. R. 13274 was referred to the Committee on Military Affairs, which reported it out with an amendment replacing everything after the enacting clause. In the debate which followed, the question was again raised as to whether the Secretary or a commission should administer the relief. Much discussion was also had on the question of compensation for profits lost by the cancellation of the contracts upon the termination of the war; and an amendment was adopted which it was thought would protect against claims based on possible profits.

At this stage, on January 28, 1919, Senator Henderson offered as an amendment an entirely new Section 7, authorizing the Secretary of the Interior (the other sections of the bill had to do with the Secretary of War) to pay the losses of war minerals producers. The wording of this amendment was identical with Senate Bill 5234 above referred to. The first part of this section read as follows:

> "That the Secretary of the Interior be, and hereby is authorized and directed to ascertain and determine the amount or amounts of money heretofore invested and obligations incurred by any and all persons and investors for producing or preparing for producing or acquiring property for producing within the United States, to supply the urgent published and evident needs of the Nation during the War, any ores, metals,

or mineral substances mentioned and enumerated as follows:"

When the clerk finished reading the amendment, Senator Smoot, who was not a member of the committee having the bill in charge, made a comment upon certain words used which has been frequently quoted by counsel for Petitioner as showing an intent on the part of Congress to eliminate from the relief granted any compensation for losses sustained in the purchase of real property.

Statement of Senator Smoot

Senator Smoot said (Congr. Record, p. 2213):

> "I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals, we should not authorize the Secretary of the Treasury to go into the question as to what he paid, and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing'?"

Senator Henderson accepted the suggestion.

If this colloquy stood alone and represented the final action of Congress, it might throw light upon the intention of that body. In fact, however, it was a mere offhand expression of personal opinion arising in the preliminary stages of the development of

this legislation, and subsequent action by Congress shows that the opinion expressed by Senator Smoot was ultimately rejected.

We shall refer later (pp. 15 ff. and 20 ff.) to Congressman Wingo's testimony in the hearings before the House Committee on Mines and Mining in which he explains this suggestion of Senator Smoot as not being fully considered by its author and having later been virtually withdrawn.

In fact, the whole amendment of Senator Henderson came as a surprise to the Senate and on request of Senator Curtis (Congr. Record, p. 2213), the debate on this amendment went over until the next day so that he and others could become familiar with it. It is evident that Senator Henderson refrained from debating the merit of Senator Smoot's suggestion at the time because he was interested primarily in having the measure passed in some form so that it could go to conference where it was apparent it must go, to be worked over carefully by those more familiar with the question. This is shown by the fact that the next day, January 29, 1919, debate continuing and other suggestions being tendered, Senator Henderson stated (Congr. Record, p. 2273) that he would accept amendments "in order that we may get to conference with it."

On the same day (January 29th) Senator Chamberlain, Chairman of the Committee on Military Affairs, accepted Senator Henderson's amendment as part of his committee's amendment to H. R. 13274, and on January 30, 1919, the Senate passed the bill with the committee amendment which con-

tained as Section 7 thereof Senator Henderson's measure for the relief of war mineral claimants.

Return of the House Bill

When the action of the Senate was reported in the House, Mr. Dent moved that the House disagree with the Senate amendments and ask for a conference. Mr. Dent objected to this entire Section 7 on the ground that it was "extraneous" and "entirely foreign to the original purpose of the bill." (Congr. Record, p. 2440). Mr. Hamlin also strenuously objected to the inclusion of the principle of Section 7 in this bill in any form; and asked that the House have a chance to vote on it before it was agreed to. Finally the motion to disagree was passed when Mr. Dent said that before the House conferees would agree to Section 7 in any form, the House should have a chance to vote on it.

Conference Committee Action

In a few days the conferees reported to their respective houses that they were agreed upon practically everything in the bill except Section 7; that the House would not agree and the Senate would not recede. When this report was made in the House a long debate was had. Time and again in the discussion the obligation of the government to give relief to the mineral claimants was emphasized. (Congr. Record, Feb. 5, 1919, pp. 2766, 2768.) Finally another conference was agreed upon. But a motion by Mr. Howard to instruct the conferees to agree to Section 7 was rejected. The Senate already had asked for a further conference.

In the House debate of February 5th, it was apparent that a good part of the objection to Section 7 was due to its particular wording. See remarks of Mr. Steagall, p. 2767; Mr. Fields, p. 2768; and Mr. Kahn, pp. 2769, 2770. So the second conference sought to agree on a wording that would be acceptable to both houses. On February 11th, the Conference Committee reported to their respective bodies an agreement upon a wording for the whole act. The first four sections of this conference measure dealt with war contracts, adopting substantially the wording of the House bill. Section 5 of this conference measure contained the war minerals provision and replaced the Section 7 referred to above. The first part of this conference section read as follows (Congr. Rec. p. 3353):

> "That the Secretary of the Interior be, and he is hereby authorized to adjust, pay or discharge any agreements express or implied upon a fair and equitable basis the amount or amounts of money heretofore invested or contracted to be invested and obligations incurred in good faith by any and all persons, firms or corporations for producing *or in good faith acquiring property for producing* within the United States for the purpose of supplying the urgent needs of the Nation during the War, any ores or mineral substances mentioned and enumerated as follows:" (Italics ours.)

Congress Approves Second Conference Report

The above quotation shows that the italicized words in this conference section contain the phrase, "acquiring property for producing," which pre-

viously had been omitted at Senator Smoot's suggestion. The only change in the phrase is that the qualifying words, "in good faith," have been added. In this form the section had been agreed to by the Senate conferees, Senators Chamberlain (who had charge of the whole bill in the Senate), Fletcher, Knox, Thomas and Warren. These men, appointed by the Senate to represent its point of view upon this piece of legislation, must have ascertained in advance of any such action upon their part that the Senate as a whole had no opposition to the substance of this phrase; otherwise they would never have consented to the bill in conference. This confirms the correctness of Mr. Wingo's explanation that all Senator Smoot was interested in was in seeing that no fraudulent or speculative claim should be eligible for reimbursement, and that Senator Smoot did not believe that all losses arising from the purchase of real property should be excluded. The additional qualifying words "in good faith," which had been added in this second conference, evidently satisfied the Senate with this proposal.

Action of the House on Second Conference Report

In the House, however, the report as a whole was not so favorably received. In the debate that followed its reading, it was evident that many of the members thought the stimulation clause was too broad; that all sorts of claims would come in for which the government was not responsible. (Congr. Rec., Feb. 14, 1919, pp. 3353 ff.) There was some feeling also that the Senate should not have included

any such relief measure in the war contracts bill. *But there was not one word said in the debate about deleting the provision covering losses suffered in acquiring property for producing.* The appropriateness of such a provision, if relief of any sort were granted, was not even questioned. Finally the House passed a motion to recommit the report to the conferees with instructions not to agree to old Section 7 (new Section 5) of the Senate amendments in any form.

Third Conference Committee

The third conference reported to the House on February 21st that they were unable to agree; and on February 25th, the matter was called up for debate. (Congr. Rec., pp. 4257-4267.)

The House Proposes a Redrafted Plan

Mr. Foster, of the Committee on Mines and Mining of the House, stated that his committee in a morning session had agreed upon a measure for war minerals relief; and he moved that the conferees be instructed to agree to the first four sections of the second conference report (dealing with war contracts) and to propose, for acceptance by the Senate conferees, a new Section 5 in a revised form proposed by his committee. This proposal was accepted and the conference measure thus arrived at ultimately became the law.

In this House debate, the proponents of the new measure pointed out that relief thereunder was now confined to producers of only four metals; that

direct stimulation to produce must now be shown; and that the bill limited payments to *net losses* and to those who produced or prepared to produce at the request of the Government. The third and fourth provisos of the act were stressed as prohibiting payments for "holes in the ground" and speculative ventures of any kind, and as requiring that the property for or upon which expenditures were made must have contained one or more of the minerals in commercial quantities. No suggestion was made in meeting the opposition to this measure that the phrase "by reason of producing or preparing to produce" was in any sense different from, or narrower than, the phrase "for producing or acquiring property for producing" which had previously been agreed on in conference. It is certain that if the Committee on Mines and Mining, interested in overcoming strenuous objections to this legislation in the closing days of Congress, had considered that this change of phraseology limited the obligation of the Government any further than the phraseology used in the conference report, it would have urged such limitation as an additional answer to the objections to the bill.

This Redrafted Plan Broadens the Relief

On the contrary, the changes of phraseology made by the committee broadened the scope of the relief intended to be afforded by the act. Under the earlier bill, as agreed on in conference, authorizing the payment of expenditures "for producing or acquiring property for producing," there was no relief to be afforded the claimant who did not produce or

acquire property for producing, but who expended money and labor in otherwise preparing to produce.

But under the phraseology prepared by the House Committee on Mines and Mining, which was thus finally enacted, relief was afforded for the net losses occasioned as well as by expenditures for labor and other like expenditures, as expenditures in acquiring property in preparing to produce. That the change of phraseology broadened the scope of the original bill in this regard is further conclusively shown by the fact that the bill as first introduced, and as reported out of conference, carried no provision that the claimant should satisfy the Secretary that his expenditures were for, or upon property, containing one of the named minerals in commercial quantities. This safeguard was first put in the bill by the Committee on Mines and Mining when it was changed to the theory of paying only the net losses "by reason of producing or preparing to produce" from the theory of paying the expenditures "for producing or acquiring property for producing."

This Committee, after going over the bill "step by step and paragraph by paragraph," raised the limitation of payments from the few cases arising from "acquiring property for producing" to the more general class of those who suffered losses "by reason of preparing to produce." This more general class embraced the class of those "acquiring property to produce." And the Committee intended by this [illegible] to include those who had by "acquiring property for production" in accordance with, for the first time, [illegible]

serted in the law that a claimant must satisfy the Secretary that his expenditures were for property containing one of the minerals in commercial quantities and his investments were not made for speculation, but in a legitimate attempt to produce, without limiting such expenditures and such investments to other than those in acquiring mining property by lease or purchase. The moral obligation of the Government to repay these losses was also strongly urged.

Congressman Wingo's Statement

Mr. Wingo, who was a member of the Committee on Mines and Mining and who helped draft this final wording of the law, said in the course of the debate (Congr. Rec., p. 4265):

> "What other limitation is there that you shall not consider any speculative profit?"

The thought recurs again and again as one reads these debates and studies the changes in the wording of the different measures, that it was protection against speculators and profiteers that the members of the Congress were aiming to achieve. The fact that a loss was incurred in acquiring property for producing rather than in preparing for producing a mine which one already owned, was immaterial to them, provided a *good faith* effort was shown and it was also clear that the investment was not for speculative purposes.

This was the idea which finally prevailed in the House [illegible] was not a scheme to pad the pockets of speculators at the expense of the Government;

that it was an effort to reimburse those who had suffered losses in a good faith attempt to meet the urgent needs of the Nation in the prosecution of the war. Mr. Hamlin, who formerly opposed the relief, stated that he was now willing to vote for it because (p. 4263):

> "All of these safeguards have been put in there. * * * I think the House knows that I do not look with favor upon these claims, but we are safeguarding it, and now propose to pay only men who were induced by agencies of the Government to *invest* their money, in order to help the Government in this extremity of the war and to pay only actual net losses—not speculative but such net losses as he can possibly show that he has sustained. * * *
>
> "* * * If the Government agencies did the things set out in the first part of this amendment, then the actual net loss that man or firm sustained, with all these deductions, ought to be paid, and for these reasons, I am going to vote for this amendment."

Final Result of Action of Conference Committee

Mr. Foster's motion was passed. (Congr. Rec., Feb. 25, 1919, p. 4267). The next day the Senate agreed to another conference. The conferees immediately agreed upon the House measure and their report was accepted and agreed to by the House on February 27th. (Congr. Rec., p. 4500).

When the report was made to the Senate on February 27th it was quickly agreed to. A few of the Senators, however, had questions to ask of Senator

Chamberlain, the sponsor for the bill in the Senate. One, particularly, asked if the bill still contained the provision against payment, under the war contracts sections, for loss of possible profits, which provision had been inserted in the act by amendment from the floor. (See *supra*, page 12.) This was Senator Chamberlain's answer (Congr. Rec., p. 4413):

> "The matter has been back and forth between the two houses for a week or more; and in order to reach any agreement at all we practically took the House Bill as a basis for reaching an agreement. If that language has been left out, it was left out because it was not in the House Bill."

This, it is submitted, is an open confession that the Senate amendments were completely discarded as a basis for reaching an agreement on the bill. It also shows that not even the points specially made in the Senate were preserved in the final bill. Discussion in the Senate and the various Senate forms of bills should not, therefore, be considered in the construction of the act as actually passed. The Senate capitulated to the House so completely that even the Senate sponsor did not know what was in the bill at the end. Only the discussions of the House members can throw any light on the construction of this language. It seems plain, therefore, that what was said in the early stages of the Senate form of the bill about the Henderson amendment, whether by Senator Smoot or anyone else, is entirely immaterial.

In the light of the foregoing, it is difficult to see how Senator Smoot's remark in connection with the

Henderson bill should ever have been thought important as bearing upon the construction of the measure that passed and became the law.

The bill pending to which Senator Smoot made reference was not the bill passed. The words which Senator Smoot objected to, in the first instance, were later reinstated with the approval of the Senate conferees, and then further broadened by the House. The Secretary in his brief in *Work v. United States ex rel. Rives*, 267 *U. S.* 175, No. 783, October Term, 1923, at pages 12 ff., called attention to an opinion of Secretary Payne (Document 885, 66 Congress, 3rd Session, p. 43) in which a statement of what Senator Smoot said was made. This statement of Secretary Payne was referred to arguendo by this court in the Rives case, supra. Secretary Payne did not have before him the full history of the Act of March 2, 1919, nor was this full history made available to this court prior to its decision in *Work v. Rives*, above.

H. J. Res. 170 Substantiates Our Claims

What Congressman Wingo, a member of the House Committee on Mines and Mining which framed the actual bill as passed, has to say about the meaning of the language used and the purpose of the act is important. The Secretary of the Interior, after the passage of the Act of March 2, 1919, appointed a commission to administer that act. Claimants under the act brought the matter to the attention of the Congress, criticising the commission vigorously, both as to the supposedly allowances made and considerations put upon the act. The action of the House

Committee on Mines and Mining removes the doubt referred to by Secretary Payne. The Committee had hearings which are printed under the title, "Hearings Before the Committee on Mines and Mining, on H. J. Res. 170."* The hearings were begun October 22, 1919, and the report contains 594 printed pages.

In the course of the hearings the statement of Senator Smoot was referred to and came up for discussion. Congressman Wingo referred to the statements of Senator Smoot, and gave a history of what actually occurred.

Statement of Congressman Wingo Referring to What Senator Smoot Said

On page 555 of the Committee's report, referred to above, Mr. Wingo said:

> "Senator Smoot, if he had adhered to his original position, would have been against the conference report; he would have been against everything, but Senator Smoot is a very practical man; after he made this short two or three-minute speech in the Senate he got to investigating the question. It is a matter of common knowledge that the claimants showed him the error of his position by private conversation; it is a matter of common knowledge that the claimants went around here and explained to members of Congress, and explained it to Senators. So Senator Smoot afterwards found that there was a just and proper demand. Now let me show you—I will read you from the very

*A copy of the report of these hearings was on the suggestion of Mr. Chief Justice Taft, left with this court on the argument of *Work v. Chestatee*, 267 U. S. 185.

utterances that he made at the time he objected to this language. It will show you that he is objecting to the very thing that the war minerals relief bill does. On January 28, 1919, page 2311 of the Congressional Record, he says:

"I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think that where a man has purchased a piece of property for producing these metals, we should not authorize the Secretary of the Treasury to go into the question as to what he paid and whether he lost upon the purchase price of that property because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far.'"

Continuing the discussion, at page 556, Mr. Wingo said:

"Mr. Smoot said that that would be going too far because he suffered loss by reason of the war stopping sooner than he thought it would. Now, what was the whole gist of the war minerals bill? It was to protect the man that we were going to get to produce these minerals, against that very loss by the sudden stoppage of the war, by authorizing contracts for two years. It was even debated upon the floor that one day before the war stopped, under the original $50,000,000 bill, a contract might be made for two years, so that there would be the Government operating and paying, if necessary, money and purchasing ore for one year and 364 days after the war stopped because the day before the war stopped, under that bill, a two-year contract

would be made by the Government. Now that was the very object of the $50,000,000 bill. Senator Smoot says here that he is opposed to that object, but subsequently he sees the error of that position. As a practical man he has gone into the fact, and he sees it, so subsequently what does he do? He agrees to a conference report that not only is broader than the original thing that he objected to, but specifically says that you may consider losses that were occasioned by expenditures either 'for or upon.' Can you conceive of any stronger language? I would say: 'You are my agent. I am going to give you written authority to go out and I am going to back you up and authorize you to make expenditures for or upon property.' Now, I come along later and I say: 'Yes; you went to put up an office in New York City. I can stand that, but when you went out and spent the money to do the main thing that I wanted you to do, to get hold of the ore by purchasing the legal record title, or getting a lease on it—no; I can't stand that. I repudiate that. You didn't have any such authority from me.' Such a suggestion and such an interpretation is repulsive to every legal mind."

And concluding the discussion, at page 557, Mr. Wingo said:

"I was frank in stating that we had liberalized the proposition by simply putting on the broad proposition that the Secretary of the Interior should be authorized to do equity, and that we would only throw certain broad restrictions around him, and that inasmuch as we were going to do equity, I myself, in order that there might be a protection to the Government

against that wide-open liberal provision, thought that we should have a provision in there that would authorize the Government to sue in case a fraudulent claim put over by such an interpretation."

Having, at page 558, been asked a question as follows:

"Why was the provision put in that no claim would be paid for land purchased for purely speculative purposes? What did you mean by that if you didn't intend in the original act to allow for property legitimately purchased?"

Mr. Wingo answered as follows:

"The inverse of a proposition is always stated by the direct statement of it. In other words, if I say that you shall not stay in the room, that is another way of saying that you shall get out of the room, and if I say that you shall not allow for speculative investments, that is an affirmative declaration that you may allow for investments not speculative. It doesn't take a lawyer to see that."

This history shows not only that his statement referred to another statute, but that Senator Smoot later understood the situation and agreed to language equally as broad, and, we believe, broader, than the original language to which he objected, and that the whole was protected by the provision against speculative investments.

Section 5 of the Act of March 2, 1919, as Passed

"Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of these ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply.'

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said act of October fifth,

nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however*, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith, or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized

in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

"That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

"Approved March 2, 1919."

Administration of the Act of 1919 Criticized

Reference has been made above to the hearings entitled H. J. Res. 170. After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the Amendment to the War Minerals Act. This report criticized severely the former commission for its illiberal treatment of claimants, and said:

Findings of Committee

"The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the Act and the application of the provisions of the Act and the application of the provisions of the law to the facts."

The report then copied portions of the Act of March 2, 1919, and said:

"The language of the act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim. For the correct rule of interpretation and application of such a statute see *United States v. Dixon* (15 *Peters*), *United States v. Union Pacific Railroad Co.* (91 *U. S.*), *United States v. State of New York* (160 *U. S.*), *Smith v. Townsend* (148 *U. S.*), *District of Columbia v. Washington Market Co.* (108 *U. S.*), *McClure v.*

United States (119 U. S.), *Monongahela Navigation Co. v. United States* (148 U. S.), *Stewart v. Kahn* (78 U. S.). For the reasons above stated the committee has not thought it necessary to amend the original act."

The warning given by the committee of the House not being heeded by the Secretary of the Interior, and his commission continuing its narrow construction of the act, Congress again took the matter under consideration and passed an act approved November 23, 1921, as follows:

Act of November 23, 1921

(Public—No. 99—67th Congress)
(S. 843)

"AN ACT to amend section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes.'

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' be, and the same is hereby, amended as follows:

"Add to the first paragraph of section 5 the following proviso: '*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of

the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said act.

"If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.'

"Approved November 23, 1921."

Suits in Court

After the passage of the Act of November 23, 1921, relator and others claiming losses because of the purchase of property, believing that the Congress had indicated an intention for more liberal terms, again appealed for an allowance to the Secretary of the Interior. Later this was denied and in order to test the question, Logan Rives filed in the Supreme Court of the District of Columbia, in 1923, a petition for a writ of mandamus. That court held that the writ should issue and that purchase of property items were allowable. An appeal was taken to the Court of Appeals of the District of Columbia and on January 7, 1924, the judgment was affirmed.

While this decision stood, and on February 21, 1924, but little more than a month after the decision

of the Court of Appeals, the Secretary of the Interior sent a communication to the Chairman of the appropriate Committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia in the Rives case and also discussed the Chestatee Pyrites & Chemical Company case, wherein was involved expenditures made for the use of borrowed money. The Secretary then proceeded to show that of the $8,500,000 originally appropriated and allowed for claims that would be awarded for items other than the purchase of property and interest on borrowed money, there would remain only the sum of $389,337.38, and the Secretary said:

Letter from Secretary of Interior

"Experience has shown that about 30 per cent of the total amount of all the claims filed has been found to be the actual net losses sustained and payable under the War Minerals Act, and if this approximate per cent shall obtain in the settlement of the remaining 200 claims, aggregating $2,592,276.36, and if all the 248 claims in which no motion for rehearing has yet been filed, involving $1,906,031.57, should be resurrected (but attention is again called to the fact that $3,062,867.50 claimed for losses on purchase of property, $453,608.54 claimed for net losses for mineral rights purchased, and $206,320.30 claimed for interest paid, *making a total* of these items of $3,722,796.34 are *not* included in the aggregate of $4,498,307.93 upon which the calculation of 30 per cent is made), then there will remain of the appropriation $389,337.38 to meet:

(a) $3,062,867.50 claimed for losses on purchase of property;

(b) $206,320.80 for interest paid on borrowed capital;

(c) $453,608.54 for purchase of mineral rights;

(d) Costs of administration;

(e) The probability or possibility of other items not allowed in the past being brought into the problems for adjustment, liquidation, and settlement under the act by litigation just as property losses and interest losses have been brought in. For illustration, if the manufacturers of ferromanganese should enter mandamus proceedings, regardless of the opinion of the Attorney General, and the courts should hold that such losses are legitimate items for repayment, then claims involving more than half a million dollars, which in these figures have been disregarded, would have to be included with those entitled to consideration and adjustment.

"And if none of the 248 claims in which no motion for rehearing has been made should be revived, there would remain of the appropriation to meet the $3,722,796.34 claimed for purchase of property, mining rights, and interest, $961,146.85, making no allowance for cost of administration."

The Secretary concluded his statement by saying:

"This communication is being sent to the Chairmen of the Appropriation Committees of the Senate and House and to the Chairmen of the Mines and Mining Committees of both branches of Congress.

"Will you not confer and give me a reply at your earliest convenience?

"Very truly yours,

(Signed) "HUBERT WORK."

Act of June 7, 1924, and Its Purpose

The Supreme Court of the District of Columbia and the Court of Appeals of the District having decided that purchase of property was an allowable item, the Secretary of the Interior, Mr. Work, having notified Congress that the appropriation was inadequate if such item and the item of interest on borrowed money were allowed, the Congress, on June 7, 1924, struck the limitation of $8,500,000 from the Act, and left in force the original appropriation of $50,000,000.

The act reads:

"(Public—No. 249—68th Congress) (S. 2797)

"An act to authorize the payment of claims under the provisions of the so-called war minerals relief act.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals act entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

"Approved June 7, 1924."

While it is true that this Court held in *Work v. Bigss*, 267 *U. S.* 175, decided May 2, 1925, that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia had no jurisdiction and therefore reversed such courts, the fact that Congress, with a knowledge that if the decisions of the District courts stood more money would need to be appropriated, made such an additional appropriation shows that Congress acquiesced in the decisions of the Supreme Court of the District of Columbia and of the Court of Appeals.

The Secretary of the Interior must have regarded the matter in a similar light, for he wrote to the Attorney General for guidance thereon. The Attorney General wrote as follows:

The Opinion of Attorney General Sargent

"22113 (Copy—M)

Respectfully referred to the

DEPARTMENT OF THE INTERIOR

for information and guidance.

Chief Clerk.

Department of Justice

Washington

March 23, 1928.

"Sir: I have the honor to acknowledge the receipt of your letters of December 9, 1927, February 25, 1928, and March 9, 1928, in which you request my opinion on the following questions arising in the administration of Section 5 of the

Act of March 2, 1919, c. 94, 40 Stat. 1272, 1274, commonly known as the War Minerals Relief Statute:

"'*First.* Are you authorized to adjust, liquidate and pay net losses sustained in the purchase of real estate?

"'*Second.* Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or payable under obligations to pay, on money borrowed for use by operators in connection with operations under the law?

"In your letter of March 9, 1928, you state that claims of such character have been filed with you for adjustment, allowance and settlement under the Act; that in your administration of the Act you have held that claims of such character are not within the purview of the statute and for that reason have declined to consider them with a view to an adjustment; that some of the claimants, and members of Congress who are giving consideration to the passage of legislation having for its purpose the enlargement of the scope of these statutes to embrace such claims, have recently appeared before you urging that the construction of the law, which has heretofore been followed, is erroneous, and that if correctly interpreted claims of the character mentioned should be reopened and adjusted without further legislation; that you have refused upon their application to recede from the construction adopted or to reconsider such cases with a view to adjustment of losses arising from the classes of claims covered by the questions submitted to me, and you now desire my opinion on the two questions of law.

"Section 5 of the Act provides:

"'That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, * * * by reason of producing or preparing to produce, either manganese, * * * or tungsten in compliance with the request or demand of the Department of the Interior, * * * to supply the urgent needs of the Nation in the prosecution of the war; * * *

"'The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided;

"'* * * *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary, that the expenditures so made or obligations so incurred by the claimant were made in good faith *for or upon property* which contained either manganese, * * * or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese * * * or tungsten for the needs of the Nation

for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, * * * from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded * * *.

* * * * *

" 'That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government in the manner aforesaid.

"Soon after its passage the question arose whether the Act contemplated payment for losses arising from the purchase of real property. Had the bill in its original form become law there would have been no doubt about it, for it contained the words 'or acquiring property for producing,' etc. In the Senate, Senator

Smoot called attention to this language and said:

"'Mr. Smoot, * * * I want to call the attention of the Senator from Nevada to the words 'or acquiring property for producing.' It seems to me that is going too far. I think where a man has purchased a piece of property for producing metals we should not authorize the Secretary of the Treasury (Interior) to go into the question as to what he paid and whether he lost upon the purchase price because of the fact that the war closed sooner than he anticipated. I believe that is going altogether too far. I will ask the Senator if it would not be very much better to strike out the words 'or acquiring property for producing.'"—Congr. Rec., 65 Cong., 3rd Sess., 2212, 2213.

"Senator Henderson who apparently had the bill in charge, agreed that the words were omitted. For various weighty reasons, including this bit of legislative history, the then Secretary of the Interior ruled that reimbursement for losses resulting from the purchase of real property was not included in the purpose of the Act. The other question, that of the power of the Secretary under the Act to allow items of interest as an element of loss, arose early in the administration of the Act and was decided in the negative. The Supreme Court has held that the Secretary's construction of the Act in both respects was within the discretion permitted by the statute. *Work v. Rives*, 267 *U. S.* 175; *Work v. Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

"The history of the administration of the Act contained in the papers submitted with your letters shows that all claims under con-

sideration by you were filed within 90 days after the passage of the Act; that your predecessors in office so construed the Act as to reject both classes of claims, and that that construction has been consistently maintained by you and that all claims filed within the statutory period have been acted upon in accordance with this construction. It further appears that the questions are presented at this time under application to reopen cases thus disposed of. It also appears that the arguments now advanced were then considered and the construction contended for by the claimants rejected.

"Prior to the amendment of November 23, 1921, c. 137, 42 Stat. 322, and during the consideration of the Amendatory Act, Congress was, under a resolution of the Senate of January 19, 1921, advised of the construction of the law adopted and followed by your predecessors. Thereafter the two amendatory acts were passed, neither of which contains language which upon any reasonable theory can be held to overrule or modify the meaning of the original act as thus construed. Of the amendment of November 23, 1921, the Supreme Court has said, 267 U. S. 180:

> " 'This amendment was brought about on the recommendation of the Secretary of the Interior, because he had felt obliged under Section 5 as it was to reject some 600 claims for failure within the time limit to show a direct personal request or demand upon the claimant by the government authorities named in the Act and a response thereto by the claimant and because the Comptroller had refused to pay any changed award of the Secretary made after a rehearing or to correct miscalculation.

"The amendment of June 7, 1924, c. 327, 43 Stat. 636, merely removed the limitation imposed by the Act on the amount to be disbursed in payment of claims. Thus, though Congress has twice amended this section of the Act by liberalizing its provisions in favor of claimants, nevertheless it has not seen fit to amend it so as to make it clearly include claims for losses of the kind covered by your question, though the Department's construction rejecting such claims was distinctly brought to its attention.

"Under such circumstances and irrespective of the reasons upon which the construction first adopted and consistently adhered to was based, or of what my own opinion might be if it were a case of first impression, and passing over the traditionally grave questions of propriety and power which always arise when the head of an executive department undertakes to review and overrule decisions deliberately made by one of his predecessors (compare 2 Ops. A. G. 8; 13 Ops. 32, 287; 15 Ops. 208), I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. I agree fully with the conclusion reached by the Solicitor of your Department that 'you would not be justified, without further legislation authorizing the inclusion of the items referred to, in considering either of them as a proper basis for an award.'

Respectfully,

(Sgd.) JNO. G. SARGENT,
Attorney General."

The Honorable,
The Secretary of the Interior.

The foregoing opinion of the Attorney General was given without reviewing and presumably without a knowledge of the facts as shown above. It may be fairly implied from the language above, which we here emphasize, that if the learned Attorney General had followed his "own opinion"; or if the grave question of "propriety and power" of one Secretary to reverse his predecessor had not existed, his conclusion would have been different. Certainly the full and accurate legislative history was not considered. (Appendix 57, 58.)

Act of February 13, 1929

This Court in the *Rives Case, supra*, having decided that the Secretary of the Interior had a discretion that could not be controlled by the courts, the Congress again evidenced its desire to see payment made to claimants, and on February 13, 1929, there was approved an act taking from the Secretary his discretion as to questions of law.

The act reads:

"(Public—No. 728—70th Congress) (S. 1347)

"An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Act (Fortieth Stat-

utes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

"Sec. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

"Sec. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

"Sec. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in ac-

cordance with the law as construed by the court in such judgment or decree.

"Approved, February 18, 1929."

The Congress in Effect Approves Respondent's Claim

If an answer were needed to the suggestion of Attorney General Sargent that "Congress has by acquiescence sanctioned and adopted your (the Secretary's) construction as a correct interpretation of its intent," this act furnishes it. For by this act, Congress unmistakably repudiates the action of the Secretary on all questions of law. If Congress had been willing to sanction and adopt the construction theretofore placed by the Secretary, it would have done nothing. There would have been no occasion to act.

The Committee on Mines and Mining said:

> "The language of the Act * * * is clear and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out * * *. For the reasons above stated the committee has not thought it necessary to amend the original Act." (Ante 26, 27.)

Our conclusion is inevitable, particularly when we consider the question above and the situation as presented to Congress at that time.

After the War Minerals Act was passed in 1919, and the Commission appointed by the Secretary began to administer it, it early became apparent that there was a sharp dispute under the law as to

whether losses suffered in the purchase of property were reimbursable under the act. In 1921 when Congress acted to extend the relief to others than those personally solicited, these questions had not yet been presented to the courts, and there was no reason for Congress to act. By 1924, however, both the Supreme Court and the Court of Appeals of the District of Columbia had decided these questions in favor of the claimants. Congress did not then act in any way so as to disapprove of such result; in fact, it impliedly approved it by voting to remove the limitation on the appropriation available to meet such claims. This was the Act of 1924. Then this court decided in May, 1925, that under the law as it then stood the courts could not review the decisions of the Secretary upon either questions of law or questions of fact. The result of this decision was to deny relief to such claimants, although the line of reasoning announced by the highest court which had attempted to pass upon the merits of the question was favorable to such claimants in every respect.

It was then for the first time that Congress was under compulsion to act if it wished to preserve the relief rights of these claimants. Up to this time (1925) Congress had relied upon the courts to construe the law in harmony with the intent of Congress, and the lower courts had done so. Then in 1925 this court pointed out that the courts lacked jurisdiction to decide these questions in any way. The effect was to leave the decision of the Secretary as final, regardless of whether it was right or

wrong. In this situation, if the conclusion of the Secretary had been satisfactory to Congress, it could have remained silent. But if the practical result reached was unsatisfactory—if its will had been thwarted—one would expect it to act.

Congress acted. It passed this Act of 1929. By doing so, it said, in effect, "Mr. Secretary, you have not construed our act correctly on these two points of law. Your decisions on issues of fact are satisfactory, and we will not change the substantive wording of the original act lest it unsettle the whole matter of relief and invite the filing now of stale claims. When these legal questions were thought to be before the courts, they read our intent correctly. Therefore, we are going to take the decision of these legal questions out of your hands and leave it to the courts, which have already indicated a correct interpretation of our intent."

These facts surrounding the passage of this Act of 1929 show it clearly to have been the intent of Congress to have the courts and not the Secretary pass finally on these disputed questions of law.

But if we leave such outside matters and look into what was said on the floor of Congress when this Act of 1929 was under discussion, our construction is even more definitely confirmed.

The Act of February 13, 1929, was originally introduced in the Senate as S. 1347. This bill provided that the Court of Claims should be the tribunal to pass on these questions of law. In the House, at the same time, had been introduced a bill, H. R.

15861, which had practically the same provisions as the Senate bill, but it provided that the claimants could go to the regular courts. When the Senate bill reached the House, it was referred to the Committee on Mines and Mining, which reported it out after striking out all after the enacting clause and inserting, as the body of the bill, H. R. 15861.

Report of the House Committee

Mr. Robsion, Chairman of the Committee, in reporting the bill, said (Congr. Rec., Feb. 4, 1929, p. 2800):

> "In 1919 Congress passed what is known as the war minerals act. It set aside $8,500,000 to take care of losses in the production of certain minerals during the war. This act gave the Secretary of the Interior entire jurisdiction in hearing and determining both questions of law and questions of fact. Some 1,200 claims have been filed and these have been adjudicated. There remains unexpended nearly $1,000,000.
>
> "There has been much complaint on the part of the various claimants to the effect that the Secretary of the Interior has not properly construed the law. There has been very little objection on the questions of fact.
>
> "All this bill does is simply to give the claimants the right to go to the district court, the court of appeals, and the Supreme Court on the questions of law alone. The action of the Secretary of the Interior under this bill, on questions of fact, is still final and conclusive.
>
> "So it is up to the House to say whether or not we want to give these claimants the right to

go to the courts to have a construction of the law. If the courts construe the law as the Secretary of the Interior construed it, there will be no expenditure; but on the other hand, if the contention as to the law in two important particulars is overturned, it may cost the Government as much as $3,000,000, according to the report of the Secretary of the Interior. We already have something like a million dollars."

A little later, in response to an interrogation as to whether this act did not enlarge the number of claimants, Mr. Wingo said:

"As a matter of fact, all this bill does is to authorize the court to determine a disputed question of law that has arisen in the department, and about which the department itself is in doubt as to what the law is."

Followed by Mr. Robsion again:

"This does not enlarge the act. It does not permit any new claims to be filed. It is merely an authorization for the courts to construe the act, and the Secretary of the Interior will administer it in accordance with the construction by the courts."

Then the following colloquy took place:

"MR. ROBSION of Kentucky. Mr. Speaker, the Secretary of the Interior has ruled that this act does not provide for the repayment of money expended for the purchase of property to produce these minerals. It does not provide for the payment of interest where men borrowed money to go into these mining ventures. The only question now that this bill will open up when the law is construed is: Does the law authorize repayment for the purchase of prop-

erty or the payment of interest that was borrowed to go into these mining operations?

"MR. DYER. Suppose the law does state that, suppose the Supreme Court decided that way, then, of course, if the claims are opened up and allowed, some of these dubious or large claims referred to will, if allowed, necessitate the appropriation of more money than has been appropriated by the Congress.

"MR. ROBSION of Kentucky. According to the report of the Secretary of the Interior, if these two items are allowed under the law, it will not mean more than $3,000,000, and there is today about $1,000,000 of the unexpended appropriation that would be applied. The Secretary says it might cost not more than a million and a half.

"MR. UNDERHILL. Mr. Speaker, will the gentleman yield?

"MR. ROBSION of Kentucky. Yes.

"MR. UNDERHILL. Is it not a fact that the decision of the Secretary of the Interior is based largely upon the assumption that these ventures were largely speculative, and that he did not believe that the Government should attempt to repay these men for money expended or chanced during the war, for the sake of profits?

"MR. ROBSION of Kentucky. That is not his view. He just held that the law does not permit the refund of money paid to buy mineral lands out of which was to be mined these minerals, and that he is not authorized to pay interest on money borrowed to go into this business."

The bill thereupon passed the House, and on February 6, 1929, after a discussion which likewise

made it clear that the purpose of the act was to have the courts pass on the questions of law, the Senate agreed to concur in the House amendment.

Thus when Congress passed this latest act, that of 1929, it was its express intention to take away from the Secretary his discretion to decide that under the law purchase money claimants could not recover, and to leave the decision of this question to the courts. In view of the fact that previous decisions of the courts had been favorable to the claimants on this question and that the decisions of the Secretary had been unfavorable, the only possible conclusion is that Congress disapproved of the Secretary's decisions and wanted those of the courts to be reinstated as controlling. If Congress had amended the War Minerals Act expressly to provide for the recovery of such claims, its intent would not have been more apparent.

Petitioner Agreed that Legislation Authorizing Suits Was Proper

Hearings were had before the passage of the Act of February 13, 1929, the relevant parts of which we insert.

EXCERPTS FROM

HEARINGS

before the

COMMITTEE ON MINES AND MINING

HOUSE OF REPRESENTATIVES

Seventieth Congress

Second Session

on

H. R. 15861

Wednesday, January 23, 1929

Amending the War Minerals Act

House of Representatives

Committee on Mines and Mining

Wednesday, January 23, 1929

The Committee met at 10:30 o'clock A. M., the Hon. John M. Robsion (chairman) presiding.

THE CHAIRMAN. The Committee will come to order. This hearing is directed to H. R. 15861, introduced by Mr. Vinson, of Georgia (Report, p. 1).

(The bill was then copied.)

The Act later passed and approved February 13, 1929, was read and copied in the report.

Statement of Edward C. Finney, First Assistant Secretary of the Interior

* * *

MR. FINNEY. The policy of the department with respect to this, as to all other cases received in the Department of the Interior is this, that the decision of the Secretary of the Interior on the facts should be final. Where the decision of the Secretary involves a construction of law, it is our policy, and the attitude of the Secretary of the Interior, Assistant Secretary Edwards and myself, and Mr. Briar, too, that we have not the slightest objection in the world to that question of law being carried into the courts and determined by the courts. After such determination, of course, it becomes our duty to carry out the law as construed by the courts, so answering specifically your questions, we prepared a proposed report to the Committee expressing that view.

This bill proposes to permit questions of law arising out of the war minerals legislation, and which are in dispute, to be carried into the courts for determination, and our proposed report was to the effect that we favored it. (Report 3.)

* * *

THE CHAIRMAN. How much? Suppose the courts should hold that interest and the purchase of property came within the act, how much, roughly, would that involve?

MR. FINNEY. It would only be an estimate. As you people know, there were 1,268 claims filed. Of course some of these claims have been adjusted, and I assume there is no further dispute on those. Some of the claims have been disallowed. Not all of

the claims, of course, involve *interest* or the *purchase* of property. Some of them may involve some other questions of law. We made a rough estimate some time ago that interest and purchase of property, if allowed, might involve between two and three millions of dollars. That was just an estimate. (Report 3.)

* * *

MR. VINSON. It is a fact, is it not, that the Department of the Interior looks with favor upon the enactment of legislation of this character, that would give the claimants a right to have the legal question determined by the courts?

MR. FINNEY. That was our attitude before we received the communication from the Bureau of the Budget. After having received that communication, we have to bow to it, and the matter is now up to Congress.

MR. VINSON. Then the Department of the Interior would like, would it not, to see Congress submit the question of law, and nothing but the question of law, to the courts for determination, so that the Department of the Interior can conclude from the decision whether or not they have administered the law in accordance with what the law is?

MR. FINNEY. As I stated a moment ago, that is our general attitude on questions of law. We would be very glad to have this or any other questions of law arising in our adjudication of cases, settled by the courts of competent jurisdiction.

MR. VINSON. As Assistant Secretary of the Interior your viewpoint, as that official, is favorable to

the enactment of this legislation and to the purport of this bill?

MR. FINNEY. Yes.

THE CHAIRMAN. It may be put this way; that the Department of the Interior is not opposed.

MR. VINSON. Yes.

THE CHAIRMAN. I mean, they do not invite litigation. I don't think any department should be put in the attitude that they invite litigation.

MR. FINNEY. That is a very good suggestion.

MR. VINSON. And I will adopt it. The Department of the Interior, then, is not opposed to the enactment of this measure?

MR. FINNEY. No. (Report 4.)

* * *

MR. FINNEY. Let me put it in another way. The courts, as I understand it, did not go into the merits; they passed on the technical question as to whether the courts of the District of Columbia, if you please, had the right to review the decisions of the Secretary of the Interior.

THE CHAIRMAN. And right there we find ourselves, in this particular instance, in a little different situation than we generally find, because there is an express provision of the act keeping folks from going to the courts, forbidding them from going to court. In nearly every other instance they have that right to go to court.

MR. FINNEY. Yes. As I said, Mr. Chairman, in most other cases they have a method of getting in,

either through an injunction or request for mandamus. (Report 6.)

* * *

MR. FINNEY. In this way: This bill, as I understand, provides that the decision of the Secretary of the Interior on facts shall still be the final conclusion.

MR. VINSON. And it is not enlarged.

MR. FINNEY. But in any question of law which has arisen or may arise in these cases, whether it shall be one or a hundred of them, the claimants shall have the right to institute a proceeding in the court to get a judicial interpretation of that particular question.

THE CHAIRMAN. Merely to get a construction on the law, and after that is had, if it is adverse to the present ruling of the Secretary of the Interior, then the cases will be adjudicated with that view of the law. (Report 6.)

* * *

MR. MANLOVE. I just want to give a concrete case. One of my constituents expended $15,000 for land, which is absolutely worthless other than for the purpose of mining and producing manganese ore. He put nine hundred and some dollars in equipment. The representatives of the Government allowed him the $900, but they refused to allow him anything on account of the real claim he had, the $15,000 which he had invested in the land. That man wouldn't have the opportunity, under this decision, because probably the question of law does not enter

into it, to have his claim reviewed, as to whether or not he should be repaid the $15,000 for the land.

MR. FINNEY. If I understand your statement, that is a question involving the purchase of property, which is one of the questions we have decided adversely to the claimants. We have said, in substance, 'You still have that property, and we are not authorized, under this law, as we construe it, to reimburse what you have paid.' The claimants say that is wrong. They say, 'We bought this property for what it was worth for manganese or some other mineral. After the war it didn't pay to mine the property and it was of no use and it was a loss. (Report 7.)

* * *

THE CHAIRMAN. As I understand this, I don't see the use of more than one case going through the courts, because you are merely going to construe the law. Then it will be up to the department to adjudicate the cases according to the law laid down by the courts.

MR. GREENWOOD. Probably they would take the strongest case, go to the court and get an adjudication of that.

THE CHAIRMAN. You don't need even the strongest case. The question of facts is not going to enter into this. They are going to read the law, and perhaps read the proceedings had in Congress, to know what was the intent and purpose and scope of that act as provided by the Congress. They will then merely construe it.

MR. GREENWOOD. But every law suit is based upon—

THE CHAIRMAN. You are assuming that the court is going into the facts. I don't understand that to be the purpose of this bill.

MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.

THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace *interest* or *capital cost*, cost for the *purchase of property*.

MR. VINSON. Interest and capital invested.

THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.

MR. VINSON. As a matter of law.

THE CHAIRMAN. As a matter of law. Not on anybody's case, or anybody's facts. (Report 9.)

* * *

MR. FINNEY. Let me explain a little further. Also let me preface that, Mr. Chairman, by saying that as I understand this bill, it is broader than you have outlined. You have touched upon two questions only, the purchase of property, the capital investment, and interest. This bill would also permit other questions of law to be carried into the courts. There may be some cases that involve some other question of law beside those two. Now, as to your

question. In the case to which you refer, and I don't know which case it is—

MR. MANLOVE. We will just use it as a hypothetical case for the purpose of illustration.

MR. FINNEY. That man expended $15,000, which he said was expended in buying a piece of ground which is now worthless, and which he intended to use as a mine?

MR. MANLOVE. Yes.

MR. FINNEY. After the war he says the land became absolutely worthless, and it resulted in a loss to him.

MR. MANLOVE. That will be admitted.

MR. FINNEY. A loss of the $15,000 invested. This bill would permit him, or one in a like situation, to go into court and determine whether the Secretary of the Interior is right when he construes the law to say that kind of a claim is not payable under the war minerals act. If the court said that it was payable, that a capital investment of that amount was repayable under the war minerals act, then the Secretary of the Interior would be set right on the law, and he would have to carry it out and administer it. Then he goes back to the facts in that man's case. Did he pay $15,000, or did he pay $13,000? Is the land worth today $5,000, or is it worth nothing? (Report 9, 10.)

* * *

Statement of John H. Edwards, Assistant Secretary of the Interior. (Report 10)

* * *

MR. EDWARDS. The Interior Department is willing at all times for all questions of law to be determined by the courts. If the Department of the Interior has misconstrued an act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an act. Those differences are never settled until some court settles them. That is the attitude of the department on this proposed bill, and all other laws, and I may say that is borne out in the administration of the war minerals act by the frequent requests made for a construction of the act by the Solicitor of the Interior Department on the several questions submitted to the Attorney General, and we always, in the administration of an act, follow the legal advisers.

MR. HARE. I gather, then, from your statement, Judge, that the department has not only no objection to this legislation, but in order that the situation might be clarified, the department would welcome such legislation to interpret these acts with reference to this mineral act?

MR. EDWARDS. Your view is my view exactly. The Congress said by this act that the Secretary of the Interior was the sole and exclusive judge of the law and the facts. I mean the present law. Now, if the Department of the Interior has misconstrued the present law, then we have denied to claimants that

which they are rightfully entitled to have under a proper construction. (Report 11.)

* * *

MR. SPROUL. But the point I am asking about is this: Hasn't there been dissatisfaction on the part of the claimants over the amount of money determined to have been their losses, independent of questions of law?

MR. EDWARDS. There has been dissatisfaction, I think, however, not so pronounced, over the settlement on the facts. There always would be. A claimant says, 'I am entitled to $100,000.' The department goes into the facts and says, 'No, you are entitled to $50,000.' Of course, he is dissatisfied, but I think in the vast majority of cases the claimants have recognized the fact that they have been fairly treated on the facts.

MR. SPROUL. What per cent of the claims contain these law controversies?

MR. EDWARDS. All claims that contain an item of *loss on property*, all claims that include the *item of interest*. (Report 12.)

* * *

MR. EDWARDS. Of course, the War Minerals Act goes back to the spring of 1919, and that was before I was connected with the department, but the Attorney General has passed on a great number of these questions, and I think perhaps all of the major questions, except the loss of property and interest, and he did pass upon that, in a way. I think he did not go into the merits of it, however.

MR. SPROUL. Did he confirm your attitude?

MR. EDWARDS. Yes; in a decision that did not go into the merits of it. That was very late. In fact, the administration was virtually closed when that question was submitted to the Attorney General, and it was submitted after a conference of Senators and Representatives with the Secretary of the Interior. (Report 13.)

* * *

MR. MANLOVE. Whether any one of the three of you would have any feeling whatever upon the question of the courts passing upon your decision in the matter.

MR. EDWARDS. Absolutely not. We are perfectly willing. In fact, if you would ask me my preference in the matter, I would state to you that I would prefer to have the opinion of the courts. Then I would know that I had not, through some interpretation placed upon it by me or followed by me, done anybody an injustice.

MR. MANLOVE. And if you have, you would be anxious and willing to have the matter properly adjudicated?

MR. EDWARDS. Absolutely.

MR. VINSON. And the opinion of the court would be in final settlement of this matter for all time to come?

MR. EDWARDS. There is no question about it, because it would remove from the realm of controversy and doubt the question. The Interior Department as well as the claimants would have to accept that as a finality. (Report 14.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 67

LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

vs.

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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[Captions omitted.]

In Supreme Court of the District of Columbia as a District Court of the United States

At law. No. 76361.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & Chemical Corporation

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and mandamus

Filed Feb. 18, 1929

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I. The relator, Chestatee Pyrites and Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia, residing in the county of Fulton, in said State, and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of claims under the acts hereinafter named against Roy O. West, citizen of the State of Illinois, officially residing in the District of Columbia.

II. That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A bill to amend section 5 of the act approved March 2, 1919, known as the war minerals act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

III. The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of said act as amended was and is:

"Authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the nation in the prosecution of the war * * *."

IV. The Chestatee Pyrites & Chemical Corporation, between the [illegible] day of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the

request of the Department of the Interior to supply the urgent need of the Nation in the prosecution of the war, made expenditures and incurred obligations in good faith upon property containing pyrites in sufficient quantities to be of commercial importance.

V. As authorized by said act of March 2, 1919, section 5, the Chestatee Pyrites & Chemical Corporation did, on the 5th day of March, 1919, file its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in said section 5 of said act.

VI. In the said petition or claim of the Chestatee Pyrites & Chemical Corporation filed as aforesaid on the 5th day of March, 1919, the relator, as part of said expenditures made and obligations incurred, claimed interest paid by it and due to be paid by it thereafter on borrowed money necessary to be borrowed for the purpose of complying with the request and demand of the Secretary of the Interior. Thereafter, on October 18, 1919, Honorable Franklin K. Lane, then Secretary of the Interior, made an award which was considered by relator wholly inadequate.

VII. Thereafter, by act approved November 23, 1921 (chapter 137, 42 Stat. 322), it was provided:

"That all claimants * * * shall be reimbursed such net losses as they may have incurred, and are in justice and equity entitled to from the appropriation in said act;"

And the Secretary of the Interior was authorized:

4 "If in claims passed upon under said act [of March 2nd, 1919] awards have been denied or made on rulings contrary to the provisions of the amendment [the amendment of November 23, 1921] or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

And the then Secretary of the Interior, Honorable Albert B. Fall, did review the claim of the Chestatee Pyrites & Chemical Corporation, relator herein, and did require a complete study of the facts of said relator's claim and, among other things, required an investigation thereof by the chief accountant in the War Minerals Relief Division of the Department of the Interior.

VIII. Said chief accountant by report filed September 21, 1922, among other things found and reported in substance that in compliance with the demands and request of the Government and in a legitimate effort to produce and in producing pyrites, relator had been compelled to borrow and expend large sums of money and had agreed to pay interest thereon; that prior to November 11, 1918, relator had actually paid interest in a large amount, and there had accrued on said loans further interest that was then unpaid. Other amounts have since accrued and are yet accruing.

IX. Prior to making said loans referred to in the report of said accountant the said Secretary of the Interior Franklin K. Lane had specifically, through his agents, urged and requested the Chestatee

Pyrites & Chemical Corporation, relator herein, to borrow the sums of money it was compelled to borrow aforesaid for the purpose of extending its production of pyrites, which money was so borrowed and used.

X. The Department of the Interior found, under undisputed evidence, that Chestatee Pyrites & Chemical Corporation, by reason of producing and preparing to produce pyrites, in compliance with the request and demand of the Department of the Interior, to supply the urgent needs of the Nation in the prosecution of the war, in good faith expended money and incurred obligations in response to such request and demand, and that such expenditures so made and obligations thus incurred by the Chestatee Pyrites & Chemical Corporation were made in good faith upon property which contained pyrites in sufficient quantities to be of commercial importance; and there is no dispute between the Department of the Interior and said Chestatee Pyrites & Chemical Corporation that said corporation is entitled to receive an allowance and award for its net losses suffered as a consequence of its compliance with said request and demand.

XI. Thereafter relator's claim was brought before the honorable Albert B. Fall, then Secretary of the Interior, who made an additional award to relator, said award being based upon the said report of said chief accountant and the finding of John Briar, assistant war minerals relief commissioner of the Department of the Interior. In said assistant relief commissioner's report on the claim of relator it was found that the Secretary of the Interior in office at the time relator was requested and required to produce pyrites, and to make said loans therefor, realized that relator's mine presented opportunity for the biggest production of pyrites in the entire country and "that the said Secretary used every means in his power to persuade claimant to develop it."

XII. Upon the coming in of said report of said Briar the honorable Albert B. Fall, then the Secretary of the Interior, reviewed the same, making allowance to relator by way of a further award but specifically and definitely denying to relator any award for its net losses incurred by reason of payment of interest on borrowed money or obligations incurred to pay further interest, the said Secretary's conclusion being in substance that if the Congress contemplated the payment of interest, such award would not preclude remedial action by the Congress.

XIII. Subsequent Secretaries of the Interior, including the respondent herein, declined and refused to make award in allowance for such expenditures or obligations incurred, admitting that interest had been paid on borrowed money and that obligations had been incurred to pay further interest but holding that such payments did not constitute allowable net losses.

XIV. Thereafter the Congress of the United States by the act hereinbefore described, approved February 13th, 1929, gave jurisdiction to this court to review the final decision of the

Secretary of the Interior upon any question of law which had arisen or which might thereafter arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2nd, 1919, and amendments thereto. On the claim of this relator there has been a final decision of the Secretary of the Interior upon a question of law, to wit: It is not disputed as a matter of fact that relator suffered net losses by reason of payments of interest on money borrowed and by reason of obligations to pay such interest but it was held by the Secretary of the Interior that notwithstanding relator had suffered such net losses, the amount of which is easily ascertainable that such net losses were not such as were required to be paid by the said act of March 2nd, 1919, as amended.

XV. Since the passage of the act approved February 13th, 1922, respondent while not denying that relator has suffered such net losses declines himself to make an award thereunder, and this petition is brought to review the final decision of the Secretary of the Interior upon the question of law aforesaid and for the writ of mandamus.

XVI. That the Secretaries of the Interior and the respondent erred in law in not finding that moneys paid and obligations incurred for the use of money borrowed as aforesaid resulting in net loss were proper matters to be allowed in making an award under said act of March 2nd, 1919, as amended.

XVII. Wherefore petitioner, on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for interest paid on borrowed money and for obligations to pay interest thereon.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made and obligations for interest incurred as hereinbefore set forth and to allow such sum as may have been paid or contracted to be paid therefor, and to adjust and pay relator's net losses, consisting of interest paid on borrowed money and obligations incurred to pay interest thereon.

3. That such other order or orders be entered as the court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES CHEMICAL CORPORATION,
By GEO. L. PRATT,
Vice President and Treasurer.

[*Duly sworn to by George L. Pratt; jurat omitted in printing.*]

In Supreme Court of the District of Columbia as a District Court of the United States

[Title omitted.]

Motion for substitution.

Filed Mar. 15, 1929

In the above-styled cause relator respectfully shows to the court that the respondent, the Honorable Roy O. West, has ceased to hold the office of Secretary of the Interior and that that office is now held by the Honorable Ray Lyman Wilbur; that there is a substantial need for continuing and maintaining the above-styled cause and for obtaining an adjudication of the questions therein involved.

Wherefore within six (6) months after the termination of the office in the office of Secretary of the Interior of the Honorable Roy O. West relator moves that this cause be permitted to continue and be maintained against his successor in office, the Honorable Ray Lyman Wilbur.

EDGAR WATKINS,
Attorney for Relator.

Receipts of copy acknowledged this Mch. 11, 1929.

O. H. GRAVES,
Atty. for Deft.

In Supreme Court of District of Columbia

Order substituting party respondent.

Notice of the foregoing motion having been given, and the Honorable Ray Lyman Wilbur, Secretary of the Interior, consisting thereto, it is ordered that Ray Lyman Wilbur, as Secretary of the Interior, be, and he is hereby, substituted for the respondent Roy O. West, and this cause be permitted to be continued and maintained against Ray Lyman Wilbur as successor in office of respondent Roy O. West.

WENDELL P. STAFFORD, *Judge.*

In Supreme Court of the District of Columbia

[Title omitted.]

Response to the rule to show cause.

Filed Mar. 15, 1929

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the court that the petition for review presents only the following question, namely: Whether or not one who was engaged in producing or

preparing to produce any of the minerals named in said act and sustained a net loss on account of, or including, interest paid on borrowed money, or indebtedness applied as capital to compliance with its provisions is entitled to have such interest loss reimbursed?

This question was decided by the Secretary of the Interior in the negative in connection with petitioner's claim for losses sustained under section 5 of the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended, and as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the war minerals relief commissioners marked, respectively, "Exhibits A, B, C, D, and E," attached hereto and made a part hereof.

Under the act of February 25, 1939 (Public, No. 728, 76th Congress), this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, as respondent makes no objection to, but on the other hand invites, review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior,
By E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.

Ex. A to response to rule

(Copy)

Department of the Interior, War Minerals Relief Commission,
Washington

Commissioners: John F. Shafer th, Martin D. Foster, Philip N. Moore

JUNE 5, 1919.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: In the matter of claim No. 1, Chestnut Pyrites and Chemical Corporation and N. P. Pratt and George [illegible] Pratt, referred by you to this commission for investigation, [illegible] commission has recommended an award of $138,578.46 as the entire sum for which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed) JOHN F. SHAFER TH.
M. D. FOSTER.
PHILIP N. MOORE.
Commissioners, War Minerals Relief Commission.

11 *Ex. B to response to rule*

(Copy)

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 8, 1919.

Claim No. 1. In re Chestatee Pyrites & Chemical Corporation, N. P. Pratt, and George L. Pratt

The above is a claim under the war minerals relief act (section 5, act of March 2, 1919, 40 Stat. 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed, and an award of $219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

Nothing has been allowed for the railroad, since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE,
Secretary.

Ex. C to response to rule

(Copy)

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, October 15, 1919.

Claim No. 1. In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt, and George L. Pratt

In the above claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of $219,607.90 was made August 8, 1919. Nothing was there allowed for railroad.

Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased. I have reviewed the record, the report of the War Minerals Relief Commission, and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) was applied the sum of $3,228.01 is added.

The award is accordingly increased to $223,629.17.

(Signed) FRANKLIN K. LANE.

Ex. D to response to rule

(Copy)

JB–WCS. SEPTEMBER 22, 1922.

Claim No. 1. The Ches'atee Pyrites and Chemical Corporation, Atlanta, Georgia

Memorandum in review of

This claimant had a partially developed plant at the time of Government interference, and the claim represents the loss due to the expanded operations under Government stimulation. It was the first claim considered under the original war minerals relief act.

The commissioners had had no experience in dealing with big, complex claims, and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages, that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own nonstimulated plans bore to the estimated expenditure and production of the bigger mill, under Government stimulation. The result was that the percentage fixed by the commission was increased by the Secretary and later, by the latter still further increased, with the claimant insisting that all were too low, and that the per cent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former commission, that the plan was unsatisfactory in some respects. Percentages and ratios were confusing, and the element of doubt was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically de novo, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended act, under which we are now considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage; but the plan itself can at least be understood and the

points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the Government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence.

Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions, and net loss are hereinafter set out.

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are allowed. Considered under the amended act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever have built it. A fair deduction would be that the plan to build the road had been abandoned. There is the certainty that the road was built after Government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to Government responsibility.

Deductions

All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed capital. Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the Government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advances were repaid by the Government. But the claimants under the war minerals relief act do not stand in the same moral relation as did the persons who advanced money to the Government during the Revolutionary War or the War of 1812. The difference is that the early patriots placed their money at the disposition of their Government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the war minerals relief act engaged in a

business enterprise with hope and the expectation of profit. The Government now, because it publicly urged increased production of ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the Government what amounted to a definite contract. Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the Government would refund to the State the expenses incurred. Also Congress had passed an act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

"Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature or by a lawful contract of its executive officers."

There were present in the New York case what the Supreme Court held to be a "lawful contract," which contemplated the repayment of interest and the necessary legislative action.

Counsel also bases the claim for interest upon the equity provision of the war minerals act. The equity provision is a broad provision. The act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed is a specific provision not to be ignored on the ground that "equity" would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class.

If the provision of the act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on borrowed capital, undoubtedly it would have provided for interest on invested capital, whether borrowed or not. In prohibiting the payment of interest on invested capital, by including the no-profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compensated.

Would apply to purchase of property

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the Government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the act? Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produce ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the war minerals fund would have been appropriated, and provision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the Government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the act a legal direction that expenditures of this
17 character be compensated. When Congress permits the payment of interest by special act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended act. At the time the act was amended, last November, Congress and claimants well know that the act was interpreted by those who were administering it to prohibit repayment for interest. Then was the time the question should have been raised and congressional expression secured. It has been contended before this writer that the Government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely may it not be said that by not offering to furnish capital the Government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the Government permits the payment of interest through specific legislative action and not through obligations created as described.

Financing charges

If, then, the general published appeals for increased production do not relate to the furnishing of capital to those who did not have it or the payment of interest to these who did, and if the act which followed contains no specific provision for financing charges, the payment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the act.

There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government has specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the Government, through
18 its agents, was a party to the financing the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This of course was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkindson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enterprise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank, and in addition was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the contract would be outrageous. But the record shows that while they assumed a risk they took pains to make the risk as small as possible. They made the contract with the Chestatee Company, but in addition to the company's notes required the personal endorse-

ment of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible claimant was required to make Ashcraft and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four successive contracts by which the $695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of $250,000 to Ashcraft and Wilkinson for their services in securing a loan of $695,000, and in addition for a brokerage fee of 25 cents per ton on the ore. This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than thirty-five per cent of the loan—a per cent for financing far above that allowed in the wildcat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated receipts for ore, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to $5,000,000, the per cent of the financing charge contained in this contract as compared with the $5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson $250,000 for a loan of $695,000.00. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the Government in whole or in part?

As to the allowance of the entire amount there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the act, was invalidated when Ashcraft and Wilkinson, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company and winding up its affairs they were estopped from holding that company or the Pratts liable for the fulfillment of the contract. It is an error to hold that the provision in the act relating to obligations incurred means that any obligation whatsoever must be compensated. The language

should be interpreted in connection with the language of the entire act. The obligation must relate to producing or preparing to produce ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded, or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

In the first award Secretary Lane allowed $18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis $320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of $320,000, the financing allowance was found to be $18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the Government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service; and while the contract which they had with claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was $895,000. Of this amount $50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, $845,000, so that the allowance which is here recommended is $84,500.00.

21

Salvage

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant when submitting the claim estimated the usable value of all the property at $300,000; but that was not intended to be an estimate of the salvage

value, for it was stated at the time that there was no salvage value because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of $200,000 did so in the belief that the equipment which they would have used in their own nonstimulated operations would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of $50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company $150,000 of its 22 preferred stock. The question is, Is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on there are good grounds for the contention. But it is the policy to ascertain the value at the time of the armistice, and therefore the claimants' own statement on that point is taken for a basis. The total face issue of the stock was $1,000,000. If this stock represented an actual property value of $200,000, it was worth, as may readily be computed, 20 cents on the dollar, and the value of the $150,000 in stock transferred to the claimant company would be $30,000. I am of the opinion that this plan of ascertaining the deductible value of the stock is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former commission allowed the cost of equipment purchased before stimulation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that [illegible] the present commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words:

Equipment and machinery purchased before stimulation but used during stimulation will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the Government was in no wise responsible for its purchase, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely valueless, such, for instance, as coal, will be compensated in full.

To hold that when the Government interferred it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the act, and the profits would be merely estimated profits which might never have been realized. Second, the Government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold, and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is $132,139.31, which makes an allowance of $26,427.86 for that item. The cost of mixed [illegible] in the same period, which should be compensated is [illegible]

[illegible] allowance of $4,092 for G. D. and N. P. Pratt was [illegible] which appears in the [illegible] from partner or part owner of a [illegible] profit to him. [illegible]

Expenditure June 18, 1917, to Nov. 11, 1918, agreed upon by the auditor for the Government and the auditor for claimant			$784,791.14
Deductions:			
Ore sales	$582,077.87		
Executive salaries	25,936.67		
Interest	40,795.13		
Taxes	884.78		
Real estate	750.00		
Legal services	565.75		
	151,010.18		
Salvage:			
Salvage for stimulation period on basis of $80,000 from Piedmont Corporation	47,546.73		
Cash received for sundry equipment	7,695.00		
	55,241.73	206,251.91	
		578,539.23	
And allowances:			
Rents from property included in deductions in operations a/c	2,881.63		
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each, @ $4.00	4,064.00		
Rental or depreciation on prestimulation plant, etc., 20 per cent of $132,139.31	26,427.86		
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed	16,901.07		
Financing contract, 10% of $640,000	64,500.00		
		114,774.56	
		693,313.79	
Less award heretofore made and paid		223,529.17	
Net loss			469,784.62

I am of the opinion that the net loss for which claimant should now be compensated is $469,784.62, and I recommend an additional award of that amount. In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it. It is true that he could and did not guarantee claimants against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to the Government's [illegible] will suffer great financial loss, notwithstanding the [illegible] provisions of the war minerals relief act. It would be [illegible] that the recommendations contained herein offer a [illegible] adjustment, but it is believed that they approximate [illegible] as can be expected in view of the [illegible] and not terminal amendable [illegible] statute.

[illegible] award of $469,784.62.

(Signed) [illegible]

Assistant Comptroller.

26 No. 2 in response to rule

(Copy)

The Secretary of the Interior,
Washington, September 23, 1922.

Claim [redacted] 1. The Cheatatee Pyrites and Chemical Corporation,
Atlanta, Georgia

Additional memorandum by the Secretary, to be attached to the records of the assistant commissioner as part of the record herein

I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim, additional allowance for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

After full consideration I am confident that the conclusions reached by the commissioner are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief; I therefore find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly.

(Signed) Albert B. Fall,
Secretary of the Interior.

In Supreme Court of the District of Columbia

[Title omitted.]

Demurrer

Filed Mar. 15, 1923

Comes now the relator, by its attorney, and says that the answer and response to the rule to show cause and to the petition herein is [illegible]

Note—Points to be argued

[illegible] shown by the answer and response and the undisputed [illegible] verified petition herein relator suffered [illegible] payments made and obligations incurred for the use of [illegible] and used in producing pyrites; that relator in making [illegible] and in incurring such obligations and [illegible]

the obligations complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses; that from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2nd, 1919, and acts amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law here involved and to enter such order herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 16th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Stipulation

Filed Sep. 24, 1929

It is hereby stipulated and agreed by and between counsel for the above-named parties:

1. That the submission of this cause heretofore made upon the petition and response be withdrawn.

2. That the response be withdrawn and stricken from the record.

3. That the uncertified copies of the findings of the Secretary of the Interior, the War Minerals Relief Commission, and the assistant commissioner of war minerals attached to the answer filed herewith be considered by the court in connection with this case with the same effect as though they were the originals.

4. That the respondent be permitted to file and serve answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

5. That petitioner relies upon the briefs heretofore filed in this cause and files herewith a short statement, to which respondent has the right to reply at any time within ten days.

6. That thereupon this cause be, and the same hereby is, resubmitted to the court for final consideration upon the petition, answer, and demurrer.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of the District of Columbia

[Title omitted.]

Order on stipulation

Filed Sep. 24, 1929

In accordance with the stipulation of counsel for the respective parties to this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the submission of this case to the court upon petition and response heretofore made be, and the same hereby is, withdrawn.

2. That the respondent's response to the relator's petition heretofore filed in this case be, and the same hereby is, deemed to have been withdrawn by the respondent, and the same hereby is stricken from the record.

3. That the respondent be, and he hereby is, permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response, which is now on file, be permitted to stand and be considered as a demurrer to such answer.

4. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the commissioner of war minerals, which are attached to the answer of the respondent which is to be filed as aforesaid, may be considered by the court in its consideration of this case with the same effect as though they were original papers.

5. That this case now to be considered as having been resubmitted to the court for final consideration upon the petition, answer, and demurrer, and upon the briefs heretofore filed by the parties thereto and upon the supplemental brief now filed by the relator.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of the District of Columbia

[Title omitted.]

Respondent's answer to the petition for mandamus

Filed Sep. 24, 1929.

For answer to the petition for mandamus in this case the respondent [illegible] says as follows:

1. [illegible] admits the allegations of the first paragraph [illegible] explanation given in the second [illegible]

[illegible] that since the filing of the petition [illegible] respondent named therein, has [illegible] and that this respondent [illegible]

Lyman Wilbur, now is the Secretary of the Interior, and that he has been substituted as the respondent in this case in the place and stead of the said Roy O. Wo[illegible].

2. The respondent admits that the duties imposed upon the Secretary in office by the act of March 2, 1919, and the acts amendatory thereof, have now devolved upon him.

3. The respondent refers to the act of March 2, 1919, for an exact statement of its terms. He admits, however, that the excerpts from the act given in the third paragraph of the petition are substantially correct.

4. The respondent admits the allegations of the fourth paragraph of the petition.

5. The respondent admits the allegations of the fifth paragraph of the petition.

6. The respondent admits that relator made claim for losses based on payment of interest and obligations incurred to pay future interest on borrowed money, used in complying with stimulation, but denies that the various awards made by the Secretary of the Interior to claimant included interest, but that such awards, as made, actually were paid to and received and accepted by the relator. Respondent further denies that interest constitutes a loss; if, however, it is such in law, it is a loss not subject to reimbursement under the provisions of the act of March 2, 1919.

7. The respondent says that the provisions of the act of November 23, 1921, will appear by reference to the act itself.

The respondent admits that the Hon. Albert B. Fall, a former Secretary of the Interior, did review the claim of the relator, giving full consideration (Secretary's opinion, September 28, 1922), and specially the memorandum in review thereof by assistant commissioner of war minerals, John Briar, dated September 23, 1922.

9. Respondent admits that the report of the chief accountant dated September 21, 1922, was duly filed and now appears in the files of relator's said claim; that the same was made for the use of the War Minerals Relief Commission and the Secretary of the Interior, and has no value in the consideration of this review; that it was advisory in its nature and of no binding effect upon the Secretary of the Interior in the consideration or disposition of relator's claim. In said report it was shown that relator had paid out money and obligated itself to pay out money in the future as interest on money borrowed to prosecute the production of pyrites; but that relator was compelled to borrow money or to pay interest, as alleged, is denied.

10. On information and belief the respondent denies the allegations of the ninth paragraph of the petition so far as they state that the relator borrowed money for the purposes therein specified at the request of a former Secretary of the Interior.

11. He admits that relator was stimulated by a former Secretary of the Interior to increase its production by enlarging its operations;

that relator, after some delay, did increase its operations, borrowing the capital to do so, but that the borrowing of the capital to comply with such stimulation was neither urged nor requested by Secretary Lane, his specific request and stimulation being as stated in detail in the report of the assistant commissioner, Briar, supra.

10. The respondent admits the substance of the allegations of the tenth paragraph of the petition, except that he specifically denies that the relator is now entitled to receive any further allowance under its war mineral claim, because he says that all that was justly and legally due to the relator under its said claim already has been paid to and received and accepted by it. The Secretary of the Interior, in his decision of September 28, 1922, said:

"If the claimant contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly."

11. The respondent admits that the relator's war mineral claim was brought before the Hon. Albert B. Fall, then Secretary of the Interior, and that Secretary Fall made an additional award to the relator in the sum of $469,784.62 in a decision dated September 28, 1922; the respondent says that the amount of this award actually was paid to and received and accepted by the relator, thus making a total of $693,313.79 paid to it on account of its said war minerals claim.

The respondent says that the basis for the Secretary's award, as stated in his decision, was as follows:

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim, additional allowance for services, and an allowance for an increased amount for compensation for the free-stimulation plant.

"After full consideration I am confident that the conclusions reached by the commission are as nearly correct as it is humanly possible to arrive at a just and equitable sum to be awarded in relief; I therefore find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousands, seven hundred eighty-four dollars and sixty-two cents ($469,784.62)."

The respondent says further that the exact language used by Assistant War Minerals Relief Commissioner John Briar in his recommendation to the Secretary of the Interior, which is referred to in paragraph 11 of the petition, was:

"If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it."

12. The respondent admits the allegations of the 12th paragraph of the petition.

13. Answering the allegations of the 13th paragraph of the petition, the respondent says that he is not advised what, if any, action was taken with respect to relator's claim for the payment of interest by other Secretaries of the Interior who held office subsequent to the Hon. Albert B. Fall. The respondent says, however, that he himself, acting through his subordinates, has declined to make any further award to the relator on account of interest alleged to have been paid by it.

14. The respondent says that the provisions of the act of February 13, 1929, will appear by reference to the act itself.

Answering the allegation of the 14th paragraph of the petition that "it is not disputed as a matter of fact that relator suffered net losses by reason of payment of interest on money borrowed and by reason of obligations to pay said interest," the respondent says that he most emphatically denies this allegation. The respondent says that it is disputed as a matter of fact that the relator suffered any such losses. The respondent says that the interest paid by the relator, and its obligation to pay interest as it accrued, represented the payment and the contract to pay a fair price for the use of money borrowed by the relator, and that the use of the money by the relator had a contract value exactly equivalent to the sum paid or agreed to be paid as interest for its use. The respondent says, therefore, that no loss in fact could result to the relator because of its interest payments, as such payments were made for an equivalent value received. The respondent says that the fact that the borrowed money after it came into the possession of the relator may have been lost by the relator in producing or preparing to produce pyrites is a matter entirely separate and distinct from the relator's contract obligation to pay value to his creditor for the use of his money.

The respondent says, therefore, that the ruling of the Hon. Albert B. Fall that interest paid or agreed to be paid by the relator for borrowed money did not constitute a loss within the meaning of the act of March 2, 1919, was right and proper, and it is ratified and adopted by this respondent.

The questions of law submitted for review therefore are: (1) Is interest paid and obligations to pay future interest for the use of money a loss? If this question be answered in the negative, the controversy is ended, but if in the affirmative, the further question arises: (2) Is it that character of loss which comes within the purview of the war minerals relief act for reimbursement?

15. Answering the allegations of the 15th paragraph of the petition, the respondent again explicitly denies that the relator in fact suffered any loss by paying interest for the use of money.

16. The respondent denies the allegations of the 16th paragraph of the petition.

17. Answering the entire petition, the respondent says that the act of March 2, 1919, pursuant to which the relator's war minerals claim No. 1 was filed, authorized the Secretary of the

Interior to adjust, liquidate, and pay such net losses as had been suffered by any person, firm, or corporation by reason of producing or preparing to produce pyrites, and other specified minerals, under the conditions set forth in the act. The act provided further that the Secretary should make such adjustment and payment in each case as he determined to be just and equitable, and that no claim should be allowed or paid by the Secretary unless it should appear to his satisfaction that the expenditures made or obligations incurred under the terms of the act were made or incurred by the claimant in good faith for or upon property which contained the minerals specified, and that no profit of any kind should be included in the allowance of any of said claims.

The respondent says that the authority and duty to construe and interpret the various provisions of the act in question were vested and imposed by Congress in and upon the Secretary of the Interior, and that in the exercise and discharge of their authority and duty as aforesaid the various Secretaries of the Interior have construed the act as intending that the same rules for the adjustment of claims filed under its provisions should be applied to all claimants alike, and that the act should be administered without discrimination in favor of any particular class of claimants.

The respondent says that more than a thousand claims were filed under the provisions of the act, and that they were presented by claimants who at the date of the passage of the act owned property, real and personal, upon or in connection with which losses thereafter were claimed; by claimants who owned money at the date of the passage of the act which they thereafter invested in such property and in the development and operation of the same; and by claimants who borrowed the money of other persons and then invested it in such property, and in the development and operation of the same.

The respondent says that the various Secretaries of the Interior, including himself, were unable to find any provision in the
36 act of March 2, 1919, which authorized them to make an allowance in favor of one who invested his own money in the purchase, development, and operation of such property on account of the use of the money so invested. Accordingly the respondent and his predecessors during the ten years which have elapsed since the passage of the act of March 2, 1919, have uniformly, and without exception so far as is known to this respondent, refused to make any allowance for the use of money in favor of war minerals claimants who invested their own money in producing or preparing to produce war minerals within the terms of that act.

The respondent says also that he and his predecessors were unable to find any distinction in law between the use in producing and preparing to produce war minerals of property already owned by a claimant, or the use of property which the claimant had acquired with his own money, and the use of property acquired by a claimant with borrowed money. They also were unable to find any distinction between development and operation of such property by a claimant

who employed his own money for that purpose, and the development and operation of such property by a claimant who employed borrowed money for that purpose. The respondent and his predecessors therefore have uniformly refused to make any allowance to a claimant on account of borrowed money by reimbursing it for the interest paid by it for the use of the borrowed money. The respondent says that any other interpretation of the act would have resulted in a discrimination in favor of claimants who were borrowers as against claimants who were owners or purchasers, and would have been against the plain intention of Congress as understood by himself and his predecessors.

17–a. The respondent says further that he and his predecessors have found, as a matter of fact, that interest paid by a borrower for the use of money does not represent a loss to the borrower, because the use of the money which the borrower enjoys has an agreed contract value which is exactly equivalent to the interest paid for the use of the money. The respondent says that the fact that borrowed money may have been employed by a war-minerals claimant in producing and preparing to produce war minerals, instead of
87 in some other way, and may have been lost in so doing, does not alter the case. The respondent and his predecessors therefore have interpreted the act of March 2, 1919, as prohibiting awards to claimants on account of interest paid for money lost in producing or preparing to produce war minerals, and have restricted their awards to the loss of the money itself.

17–b. The respondent says further that he and his predecessors have found as a matter of fact that to allow interest to a claimant upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals would be to include a profit in the allowance of its claim, contrary to the provisions of the act of March 2, 1919. The respondent says that a war minerals claimant who borrowed money and employed it in producing or preparing to produce war minerals, profited to the extent of the value of the use of the money, and that the payment of interest by the claimant to the lender as compensation for the use of such money was not a loss, but simply was a surrender of the profit. The respondent says that for the United States to reimburse a claimant for interest paid upon money borrowed by it and thereafter employed in producing or preparing to produce war minerals, would be nothing less than an allowance of profit to the claimant in the adjustment of its claim. The respondent and his predecessors therefore have construed the act of March 2, 1919, as prohibiting the allowance of interest paid upon borrowed money, for that reason also.

17–c. The respondent says further that he and his predecessors in office have construed the provision of the act of March 2, 1919, "that no claim shall be allowed or paid by the Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained" certain specified minerals as meaning exactly what it says. The respondent says that

the payment of interest or an obligation to pay interest on borrowed money by a war minerals claimant was a matter entirely separate and distinct from the expenditure of the money itself for or upon mineral property, and from the obligations incurred for or upon such property, and that therefore he and his predecessors have construed the act of March 2, 1919, as prohibiting the allowance of a claim for the payment of interest for that reason also.

The respondent says that the foregoing constructions placed upon the act of March 2, 1919, by himself and his predecessors all are warranted by the express language of the act itself, and that none of them is capricious or arbitrary, and that as these constructions of the act all have been consistently adhered to in the Department of the Interior for ten years past, and since the passage of the act of March 2, 1919, such constructions and interpretations of the act should be respected by the courts, and accepted as stating the true intention of Congress with respect to claims for losses by war minerals claimants on account of interest paid on borrowed money.

18. The respondent says further that the relator's war minerals claim No. 1 was the first claim to be filed under the act of March 2, 1919, and that the decisions made with respect to it were among the earliest ruling of the Secretary of the Interior made in the administrations of that act. The respondent says that the language used by the Hon. Albert B. Fall, in his decision of September 28, 1922, which is cited by the relator in paragraph 12 of its petition, wherein he said, "If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award of course does not preclude remedial action by the Congress of the United States acting directly," was a direct suggestion to Congress to set the Secretary of the Interior right if he was wrong in deciding that interest paid for borrowed money was not within the purview of the act of March 2, 1919. The respondent says that although the question of interest has been litigated in the courts, and although Congress has passed further legislation with respect to war minerals claims, Congress has never declared or intimated that an award should be made on account of interest payments, but through eight years of silence has tacitly acknowledged the correctness of Secretary Fall's interpretation of its intention in that respect as expressed in the act of March 2, 1919.

19. The respondent, for the reasons hereinbefore stated, denies that he or his predecessors in office have committed any error in law by denying an award to the relator for losses alleged to have been sustained by it through the payment of interest upon borrowed money.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.
By JOS. M. DIXON,
Acting Secretary of the Interior.

[Duly sworn to by Jos. M. Dixon; jurat omitted in printing.]

In Supreme Court of the District of Columbia

At law. No. 76361

CHESTATEE PYRITES & CHEMICAL CORPORATION

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Final judgment

Filed Mar. 7, 1930

This cause came on to be heard on the petition of Chestatee Pyrites & Chemical Corporation for review and mandamus, and upon the answer of the respondent and the demurrer of petitioner, and upon the stipulation of the parties and the order of this court approving such stipulation, entered on the 24th of September, 1929, which order and stipulation submitted to the court for final consideration upon the petition, answer, and demurrer the issues made thereby.

Now, on this March 7, 1930, ordered, adjudged, and decreed that the petition of Chestatee Pyrites & Chemical Corporation for review and mandamus is denied, and it is ordered and decreed that the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior, and the petition for review and mandamus are dismissed.

By the court:

WENDELL P. STAFFORD, *Justice.*

From the foregoing judgment Chestatee Pyrites & Chemical Corporation, petitioner, in open court, notes an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the undertaking for costs on such appeal is fixed in the sum of one hundred dollars, with leave to deposit the sum of fifty dollars with the clerk in lieu thereof.

By the court:

WENDELL P. STAFFORD, *Justice.*

Consent as to form.

O. H. GRAVES, *Atty. for Deft.*

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

41 *Memorandum re bond*

March 7, 1930: $10 deposited in lieu of bond on appeal.

In Supreme Court of the District of Columbia

[Title omitted.]

Assignment of errors

Filed Mar. 7, 1930

The appellant, Chestatee Pyrites & Chemical Corporation, assigns the following errors in the ruling of the court.

The court erred:

1. In refusing on the admitted facts to adjudge and decree that interest paid on borrowed money by appellant and subsequently lost, constituted an item of net losses under section 5 of the act of March 2, 1919, and the amendments thereto, upon which act and amendments appellant relied in its petition herein.

2. In refusing on the admitted facts to adjudge and decree that obligations to pay interest on money borrowed by appellant, and subsequently lost, constituted an item of net losses under section 5 of the act of March 2, 1919, and the amendments thereto, upon which act and amendments appellant relied in its petition herein.

3. In refusing to review the acts of the respective Secretaries of the Interior referred to in the petition, and in refusing to enter an order directing the respondent Secretary to make an appellant an award of such amounts as the facts show appellant paid for the use of borrowed money and which payment admittedly was lost by appellant.

4. In refusing to review the acts of the respective Secretaries
42 of the Interior referred to in the petition, and in refusing to enter an order directing the respondent Secretary to make to appellant an award of such amounts as the facts show appellant obligated itself to pay for the use of borrowed money, and which obligation admittedly was an item of loss to appellant.

5. In refusing to issue a writ directing the respondent-appellee to take jurisdiction of the claim of appellant and determine the amount of net losses for expenditures made and obligations incurred for interest on borrowed money, and further directing respondent-appellee to make an award to appellant for the net losses incurred by such expenditures and from such obligations.

6. In denying appellant relief on its petition herein.

EDGAR WATKINS,
Counsel for Appellant.

In Supreme Court of the District of Columbia

[Title omitted.]

Designation of the record

Filed Mar. 7, 1930

The clerk will please prepare the transcript of record on the appeal of Chestatee Pyrites & Chemical Corporation, including therein the following parts of the record:

1. Petition for review and mandamus.
2. The petition for an order substituting Ray Lyman Wilbur as respondent.
3. The original response to the rule to show cause, with the exhibits thereto attached.
4. Demurrer filed by Chestatee Pyrites & Chemical Corporation.
5. Stipulation of the parties hereto, dated September 2, 1929.
6. Order of the court on said stipulation, dated September 24, 1929.
7. Respondent's answer to the petition for mandamus, omitting the exhibits copied with paragraph 3, above.
8. Final decree denying relief and dismissing the petition for review and mandamus.
9. Memorandum as to approval and filing of bond on appeal of Chestatee Pyrites & Chemical Corporation.
10. Assignment of errors on appeal of Chestatee Pyrites & Chemical Corporation.
11. This designation of transcript of record and the acceptance of service thereon.

EDGAR WATKINS,
Counsel for Appellant, Chestatee Pyrites & Chemical Corporation.

In Supreme Court of District of Columbia

Acknowledgment of service

Notice is hereby accepted of the application for an allowance of the appeal in this cause; receipt is hereby acknowledged of a copy of appellant's assignment of errors and of its designation of record on appeal. All other and further notice and service is acknowledged.

O. H. GRAVES,
Solicitor for Ray Lyman Wilbur, Secretary of the Interior.

[Clerk's certificate to foregoing transcript omitted in printing.]

44 [Omitted.]

45 In Court of Appeals of the District of Columbia.

[Title omitted.]

Minute entry of argument and submission

Oct. 9, 1930

The argument in the above-entitled cause was commenced by Mr. Edgar Watkins, attorney for the appellant, and was continued by Messrs. O. H. Graves and Victor H. Wallace, attorneys for the appellee, and was concluded by Mr. Marion Smith, attorney for the appellant.

46 In Court of Appeals of the District of Columbia

No. 5194

THE UNITED STATES OF AMERICA EX REL. CHEMICAL PYRITES & Chemical Corporation, a Corporation, appellant

vs.

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, APPELLEE

Before MARTIN, Chief Justice, ROBB, Associate Justice, and WHEAT, Chief Justice of the Supreme Court of the District of Columbia.

Opinion

Filed Feb. 2, 1931

Mr. Justice WHEAT delivered the opinion of the court:

This is an appeal from a judgment of the Supreme Court of the District denying a petition of the relator for review, pursuant to the act of February 15, 1929 (c. 182, 45 Stat. 1166), of the action of the Secretary of the Interior in rejecting a claim filed under section 5 of the act of March 2, 1919 (c. 94, 40 Stat. 1272, 1274), commonly called the war minerals relief act.

The sole question presented is whether interest paid or agree to be paid by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that act, the Secretary should recognize and pay. The court below, affirming the decision of the Secretary, held that it did not, and that ruling is brought here for review by the relator's appeal.

This precise question was before this court in the case of Work v. United States (54 App. D. C. 380, 298 Fed. 839), which, on May 5, 1924, decided the question in favor of the relator.

On appeal to the Supreme Court that judgment was reversed upon the ground that the statute clothed the Secretary of the Interior with

complete discretion to determine the question, a discretion not reviewable by the courts. (Work v. United States, 267 U. S. 175.)

On February 13, 1929, the act of March 2, 1919, as amended, was further amended so as to provide:

"That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said acts, generally known as the war minerals acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court." (Act of Feb. 13, 1929, c. 182, 45 Stat. 1166.)

Section 3 of the same act conferred jurisdiction upon the Supreme Court of the District to hear and determine all such suits, subject to a right of appeal by either party to this court, with a further review by the Supreme Court of the United States, by certiorari, as provided by law and the rules of court.

Pursuant to this act the relator, on February 18, 1929, filed a petition in the Supreme Court of the District, setting forth facts necessary to bring itself within the statute, and asking the court to review the decision of the Secretary of the Interior, and issue a writ of mandamus directing him to take jurisdiction of the claim and to adjust and pay relator's net losses consisting of interest paid on borrowed money and obligations incurred to pay further interest thereon. The Secretary answered the petition, and to that answer the relator demurred. The pleadings were so drawn as to present squarely that single issue of law, a decision of which, we are led to believe, is desired and sought by both parties.

When the question was before us before, it was fully presented and carefully considered. The language of the statute was that those bringing themselves within the other provisions of the statute "shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act."

Construing this language, we said:

48 "Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or obligated to be paid in this case should be allowed." (Work v. United States, 54 App. D. C. 380, 385; 298 Fed. 839, 842.)

We see no reason for now taking a different attitude toward the question. The reversal by the Supreme Court was not upon the ground that our decision had construed the statute erroneously, but upon the ground that we had no jurisdiction to review the construction placed upon it by the Secretary.

It is urged by respondent that the act of February 18, 1929, does not alter the provision of the preceding war minerals act; that at the time the 1929 act was under consideration Congress knew that the Secretary of the Interior had always construed section 5 of the act of March 2, 1919, as excluding from its benefits interest paid upon borrowed money, and that for approximately 10 years the Secretary of the Interior had acted upon that construction of the act; that as far back as 1922 Secretary Fall had invited the correction of Congress in case his conclusion with respect to interest was wrong; that during the four years since the decision of the Supreme Court of the United States Congress had remained silent; and that the act of February 18, 1929, is silent with respect to interest. Such being the sequence of events, it is argued that if Congress disagreed with the construction placed upon the act by the Secretary "nothing could have been easier than for it to have said so."

It is equally clear, however, that if Congress had agreed with the construction placed upon the act by the Secretary nothing could have been easier than for it to have said nothing whatsoever. Instead of doing so it conferred jurisdiction upon the same court which therefore, in the exercise of its supposed jurisdiction, had decided the question contrary to the decision of the Secretary. The inference that Congress approved of the decision of the court is at least as strong as the inference that it approved of the decisions of the Secretary. Whereas his decisions had theretofore been final and conclusive, they now became reviewable by the same court, which had theretofore pronounced them erroneous. We can see no purpose in the act other than to give the court power to decide the question. If that was not its purpose, then the statute is meaningless. Feeling as we do that our former decision was correct, it follows that the judgment appealed from must be reversed, and the cause is remanded for further proceedings not inconsistent herewith.

[File endorsement omitted.]

50 In Court of Appeals of the District of Columbia

No. 5194. January term, 1931.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, a Corporation, appellant

v.

RAY LYMAN WILBUR AS SECRETARY OF THE INTERIOR

Judgment

Feb. 2, 1931.

APPEAL from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued

by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said supreme court for further proceedings not inconsistent with the opinion of this court.

Per Mr. Justice WHEAT.

FEBRUARY 2, 1931.

Mr. Chief Justice Wheat of the Supreme Court, D. C., sat in this case in the place of Mr. Justice Van Orsdel.

81 In Court of Appeals of the District of Columbia

[Title omitted.]

Designation of record

Filed April 29, 1931

The clerk will prepare a transcript of record in the above-entitled case, including the following:

1. Printed record.
2. Note of the argument.
3. Opinion of the court.
4. Judgment of the court.
5. This designation and clerk's certificate.

THOMAS D. THACHER,
Solicitor General,
Counsel for Appellee.

APRIL 29, 1931.

82 [File endorsement omitted.]

83 [Clerk's certificate to foregoing transcript omitted in printing.]

84 Supreme Court of the United States

Order allowing certiorari

Filed May 25, 1931

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 35858. District of Columbia, Court of Appeals. Term No. 67. Ray Lyman Wilbur, as Secretary of the Interior, petitioner, vs. United States of America ex rel Chestatee Pyrites & Chemical Corporation. Petition for a writ of certiorari and exhibit thereto. Filed May 2, 1931. File No. 35858.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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CITATIONS

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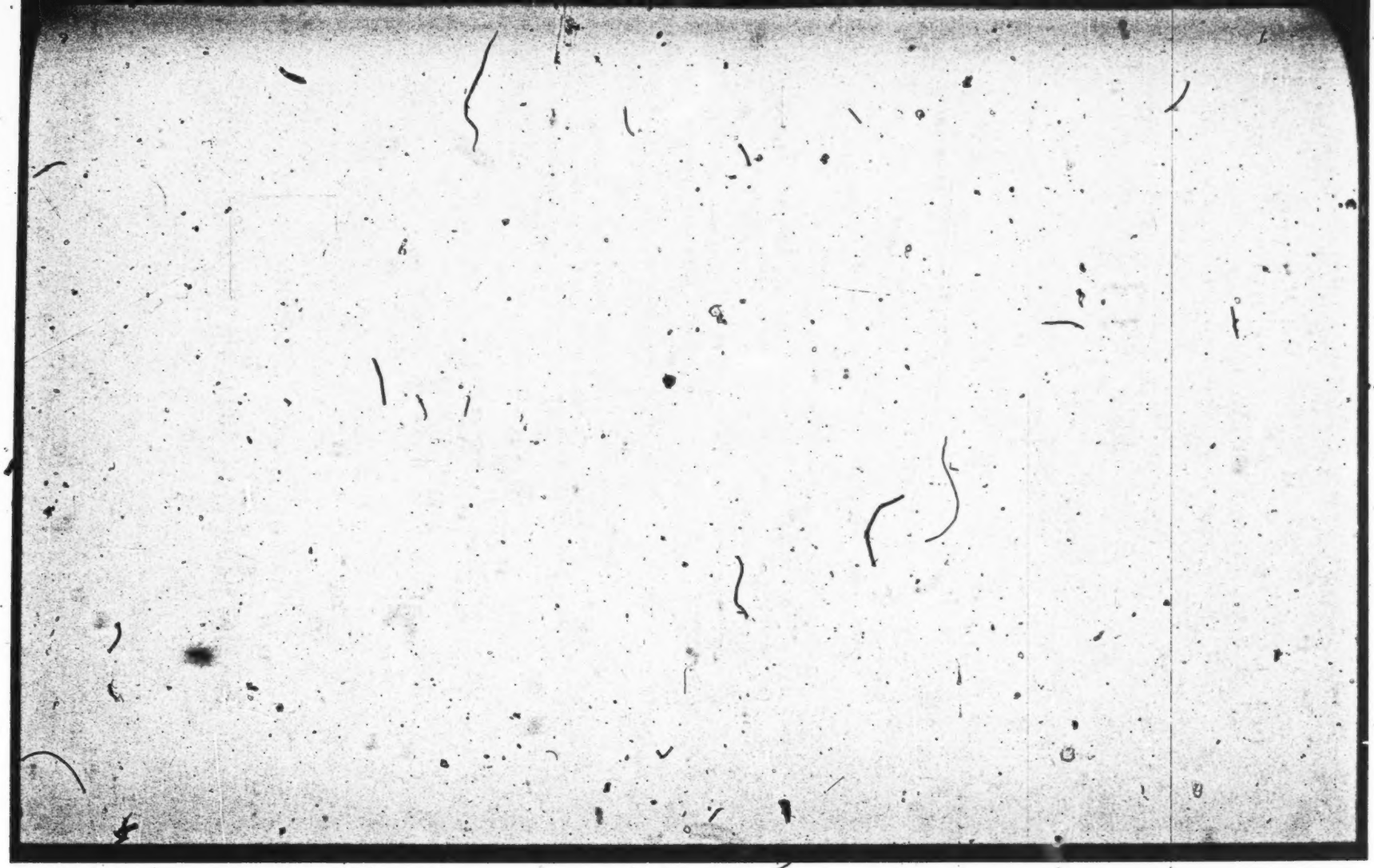

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. —

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation, a Corporation

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA[1]

The Solicitor General, on behalf of the Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia, entered in the above-entitled cause on February 2, 1931 (R. 47), reversing the judgment of the Supreme Court of the District of Columbia.

STATEMENT

Pursuant to the Act of February 13, 1929, c. 182, 45 Stat. 1166, the respondent company filed a peti-

[1] The questions presented in this case are substantially similar to those presented in *Ray Lyman Wilbur, as Secretary of the Interior, Petitioner*, v. *The United States of America ex rel. Vindicator Consolidated Gold Mining Company, a Corporation*, and the argument for granting the petition is the same.

tion in the Supreme Court of the District of Columbia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for interest paid on money borrowed, which was disallowed by the Secretary of the Interior in so far as such expenditures were concerned. The Supreme Court of the District dismissed this petition, but upon appeal to the Court of Appeals of the District of Columbia this decision was reversed and remanded to the Secretary for further proceedings. The action of a former Secretary of the Interior in disallowing the same claim was upheld by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185, prior to the enactment of the Act of February 13, 1929.

On March 5, 1919, the Chestatee Pyrites & Chemical Corporation (hereinafter called the respondent) filed a claim with the Secretary of the Interior under the provisions of Section 5 of the War Minerals Relief Act of March 2, 1919. (Appendix, p. 15.) In so far as is material, this Act provides:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * *, to

supply the urgent needs of the Nation in the prosecution of the war * * *.

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; * * * *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained * * * pyrites * * * in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce * * * pyrites * * * for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary * * *.

In its claim the respondent asked an award for net losses alleged to have been sustained in pro-

ducing and preparing to produce pyrites under the conditions referred to in the Act of March 2, 1919. An award was made in favor of the respondent in the sum of $223,529.17. (R. 12.) After the adoption of the Act of February 23, 1921, which amended Section 5 of the Act of March 2, 1919 (Appendix, p. 15), the respondent asked for a rehearing upon its claim, and upon such rehearing a further award of $469,784.62 was made (R. 26), and the total amount of such awards, $693,313.79, was paid to the respondent. The award disallowed items claimed by the respondent as payments of interest upon money borrowed by the respondent. Thereafter the respondent filed a petition in the Supreme Court of the District of Columbia praying a writ of mandamus to compel the then Secretary of the Interior to adjust and pay the alleged loss sustained by the respondent through the payment of interest as aforesaid. The writ was granted, and upon appeal to the Court of Appeals of the District of Columbia that court affirmed the judgment of the lower court. *Work, Secretary of the Interior,* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 54 App. D. C. 380.

Upon appeal to this Court the judgment of the Court of Appeals of the District of Columbia was reversed by a judgment rendered on March 2, 1925. *Work, Secretary of the Interior,* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 267 U. S. 185.

The respondent under the Act of February 13, 1929, which provided for review of the decision of the Secretary of the Interior on questions of law, filed its petition for review and mandamus in this case. The petition (R. 2) alleged, in substance, the filing of a claim with the Secretary of the Interior under the Act of March 2, 1919, based upon interest paid on money borrowed by respondent which was used in producing and preparing to produce pyrites, and that successive Secretaries of the Interior, including the petitioner, had refused to make an award to the respondent upon its claim for such interest. The petition asked a review of this decision under the Act of February 13, 1929, and appropriate relief.

The petitioner originally filed a response to the petition for review and mandamus, to which were annexed exhibits showing the action of the Secretary of the Interior in denying respondent's claim. (R. 9.) The response was withdrawn by stipulation (R. 28), leaving the exhibits annexed to be considered by the court, and the petitioner answered. The answer (R. 30) alleged, in substance, that the various Secretaries of the Interior, in the exercise of the discretion confided in them by the Act, refused to allow claims based upon the payment of interest upon borrowed money, and that respondent's claim had therefore been disallowed. The reasons for this conclusion were set forth in the answer. The case was heard and determined upon the pleadings.

The Supreme Court of the District of Columbia dismissed the petition and ordered and decreed that "* * * the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior * * *." (R. 40.) Upon appeal to the Court of Appeals of the District of Columbia, that court reversed the judgment of the lower court and remanded the case "for further proceedings not inconsistent herewith," holding that the claim for interest paid should be allowed as a matter of law. It referred to its prior opinion in *Work* v. *Chestatee Corporation,* 54 App. D. C. 380, and also to the reversal of that decision by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185, but stated that the reversal by this Court was not upon the ground that its prior decision had construed the statute erroneously, but upon the ground that it had no jurisdiction to review the construction placed upon the statute by the Secretary of the Interior. (R. 45–47.)

SPECIFICATIONS OF ERROR TO BE URGED

The court below erred—

(1) In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon interest on borrowed money.

(2) In holding that as a matter of law the petitioner was required to make an allowance for any

net loss sustained by the respondent because of interest paid on borrowed money.

(3) In holding that the petitioner should determine as a matter of fact the net loss sustained by the respondent in the payment of interest on borrowed money.

(4) In holding that petitioner's discretion under the Act of March 2, 1919, disallowing claims based upon interest paid on borrowed money, was eliminated by the Act of February 13, 1929.

(5) In directing the Secretary to allow respondent's claim without determining whether the allowance of the claim would in his opinion be just and equitable.

REASONS FOR GRANTING THE WRIT

(1) Unless the Act of February 13, 1929, is to be interpreted as depriving the Secretary of all discretion in the allowance of claims, the decision in the present case is in conflict with the decisions of this Court.

In *Work* v. *Rives*, 267 U. S. 175, this Court held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow a claim based upon the cost of obtaining a release from a contract to buy land, and that the exercise of discretion by the Secretary of the Interior in disallowing such a claim was not subject to review by mandamus.

In *Work* v. *Chestatee Corporation*, 267 U. S. 185, this Court considered the same portion of the same

claim which is involved in this case, and held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow the claim for interest paid by the respondent upon money borrowed by the respondent to enlarge its plant to meet the war necessities, and that the exercise of this discretion was not subject to review by mandamus.

These cases were decided by this Court prior to the enactment of the Act of February 13, 1929. At the time they were decided there was no provision in the statutes for the review of a decision by the Secretary of the Interior in connection with claims under the War Minerals Relief Act, and reference was made to the absence of any provision for such review in the opinion of this Court in *Work* v. *Rives, supra*. The Act of February 13, 1929, limits the review to "any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment" of claims. The Act expressly provides that "The decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court."

The decision of the court below draws no distinction between the broad discretion of the Secretary of the Interior in making such adjustments and payments in each case as he may determine to be just and equitable, which this Court held in *Work* v. *Rives* and *Work* v. *Chestatee Corporation, supra*, was conferred upon him by the Act of March

2, 1929, and his discretion, also conferred by that Act, to determine finally and conclusively all questions of law in connection with its construction. Nor does the decision of the Court below consider the effect upon these grants of discretion of the Act of February 13, 1929, which merely provides for judicial review of the Secretary's decision on any question of law.

Proceedings in accordance with its opinion as directed by the court below will necessarily require the determination of any loss resulting from the expenditure in question, and the allowance thereof by the Secretary, without consideration or determination by him as required by the Act, as to whether such an allowance is just and equitable. This being the effect of the decision, we submit that the decision is in conflict with the decisions of this Court in *Work* v. *Rives* and *Work* v. *Chestatee Corporation, supra*. This necessarily follows because the Act of February 13, 1929, does not touch or affect in any way the broad discretion reposed in the Secretary to determine, according to his own sense of equity and justice, whether any claim under the Act should as a matter of favor be allowed, as declared and defined by this Court in *Work* v. *Rives, supra*.

2. The construction of the War Minerals Relief Act adopted by the Secretary of the Interior in refusing to allow the respondent's claim for expenditures made for interest on borrowed money was correct in point of law. This construction is sup-

ported by the consistent Departmental construction of the statute since its enactment in March, 1919.* Since that time the Secretaries of the Interior have consistently refused to allow claims under this Act for interest paid on borrowed money. (See Answer, R. 36.) There is nothing, we submit, in the Act of February 13, 1929, which shows Congressional disapproval of this construction.

3. The question whether the determination of claims under the War Minerals Relief Act is still left to the sense of justice and equity of the Secretary of the Interior, as this Court held it was prior to the enactment of the Act of February 13, 1929, is a question of the utmost importance in the administration of this law, as is also the question as to whether or not claims of the kind here involved are, as a matter of law, allowable in the exercise of such discretion by the Secretary. There are a large number of cases now pending which will be decisively disposed of by the decision of this Court upon these two questions presented by this case.* Since the Act of February 13, 1929, provides that de-

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*Under date of April 29, 1931, the Solicitor of the Department of the Interior stated:

According to the records of the Interior Department there are 1,268 War Minerals claims, of which 396 involve purchase of property and leases and interests as follows:

Property	$3,062,867
Leases	408,608
Interest	206,390

Of these 396 claims, 346 are the subject of suits filed in the Courts of the District under the act of February 13, 1929. Approximately 235 of the 346 cases involve property

cisions of the Secretary of the Interior may be reviewed only upon petition to the Supreme Court of the District of Columbia, unless these questions are reviewed by this Court the Government will be bound, in all similar cases, by the decision of the court below.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

MAY, 1931.

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and leases, and 111 involve interest. The amount claimed for property would be reduced by reductions for salvage, while the amount claimed for interest would be increased and possibly more than doubled if computed to the date of settlement of the claim.

To conclude, therefore, it appears that there are approximately 235 cases involving purchase of property which includes leases and 111 involving claims for interest and the estimated amount involved would be in excess of $3,000,000.

MEMORANDUM IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 45) is reported in 47 F. (2d) 424. No opinion was rendered by the Supreme Court of the District of Columbia but its judgment, stating the basis of its decision, is in the record. (R. 39.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931. (R. 47.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

1. Was the discretion of the Secretary of the Interior under the Act of March 2, 1919, to disallow claims, the allowance of which he determined to be unjust and inequitable, removed by the Act of February 13, 1929?

2. Was the action of the Secretary of the Interior in disallowing respondents' claim based upon interest paid on borrowed money erroneous as a matter of law?

STATUTES INVOLVED

The applicable statutes appear in the Appendix.

ARGUMENT

The argument submitted in support of the petition for certiorari filed by the Secretary of the Interior in *Ray Layman Wilbur, as Secretary of the Interior,* v. *The United States ex rel. The Vindicator Consolidated Gold Mining Co., a corporation,* is applicable in support of this petition, and reference is made to the brief in that case. It should be noted that the claim involved in this case was the same claim which was considered by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185. The judgment of the court below, based upon its opinion in this case, has the effect of directing the petitioner to allow respondent's claim, irrespective of his views of its justice and equity, and thereby deprives him of the discretion conferred upon him by statute.

CONCLUSION

Because of the importance of the question involved in the administration of the law by the Secretary of the Interior and the apparent conflict between the decision of the court below and the decisions of this Court, it is submitted that the

petition should be granted, and that the judgment below should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

SETH W. RICHARDSON,
Assistant Attorney General.

G. A. IVERSON,
Special Assistant to the Attorney General.

WHITNEY NORTH SEYMOUR,
Attorney.

E. C. FINNEY,
Solicitor Interior Department.

MAY, 1931.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war, said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling

and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen

hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be

claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for cer-

tiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATER PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 30) is reported in 47 F. (2d) 424. No opinion was rendered by the Supreme Court of the District of Columbia, but its judgment, stating the basis of its decision, is in the record. (R. 27.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931.

(R. 32.) The petition for certiorari was filed May 2, 1931, and was granted May 25, 1931. (R. 33.) The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Was the action of the Secretary of the Interior in disallowing the portion of respondent's claim based upon interest paid upon borrowed money erroneous as a matter of law?

2. Was the discretion of the Secretary of the Interior under the Act of March 2, 1919, to disallow claims, the allowance of which he determined to be unjust and inequitable, removed by the Act of February 13, 1929?[1]

STATUTES INVOLVED

The applicable statutes appear in the Appendix, *infra*, pp. 19–24.

STATEMENT

Pursuant to the Act of February 13, 1929, c. 182, 45 Stat. 1166, the respondent filed a petition in the Supreme Court of the District of Columbia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for interest paid on money borrowed, which was disallowed by the Secretary of the Interior in so far as such expenditures were

[1] The same question is involved in No. 66.

concerned. The Supreme Court of the District of Columbia dismissed this petition by a judgment in which it was ordered and decreed that "the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior." (R. 27.) Upon appeal to the Court of Appeals of the District of Columbia that court reversed this judgment and remanded the case to the Secretary for further proceedings not inconsistent with its opinion, holding that the claim for interest paid should be allowed as a matter of law. It referred to its prior opinion in *Work* v. *United States ex rel. Chestatee Corporation*, 54 App. D. C. 380, involving the disallowance of the same claim by a former Secretary of the Interior, and also to the reversal of that decision by this Court in *Work* v. *Chestatee Corporation*, 267 U. S. 185, but stated that the reversal by this Court was not upon the ground that its prior decision had construed the statute erroneously, but upon the ground that it had no jurisdiction to review the construction placed upon the statute by the Secretary of the Interior. (R. 30–32.)

On March 5, 1919 the Chestatee Pyrites & Chemical Corporation (hereinafter called the respondent) filed a claim with the Secretary of the Interior under the provisions of Section 5 of the War Minerals Relief Act of March 2, 1919 (Appendix, *infra*, pp. 19–24). In its claim the respondent asked an award for net losses alleged to have been sustained in producing and preparing to produce

pyrites under the conditions referred to in the Act of March 2, 1919. Two awards were made to the respondent in the total amount of $693,313.79, which was paid. Items claimed by the respondent as payments of interest upon money borrowed by it were disallowed. Thereafter the respondent filed a petition in the Supreme Court of the District of Columbia praying a writ of mandamus to compel the then Secretary of the Interior to adjust and pay the alleged loss sustained by the respondent through the payment of interest as aforesaid. The writ was granted, and upon appeal to the Court of Appeals of the District of Columbia that court affirmed the judgment of the lower court. *Work, Secretary of the Interior,* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 54 App. D. C. 380.

This Court reversed the judgment of affirmance on March 2, 1925. *Work* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 267 U. S. 185.

Respondent's present petition (R. 1) alleged, in substance, the filing of a claim with the Secretary of the Interior under the Act of March 2, 1919, based upon interest paid on money borrowed by respondent which was used in producing and preparing to produce pyrites, and that successive Secretaries of the Interior, including the petitioner, had refused to make an award to the respondent upon its claim for such interest. The petition

asked a review of this decision under the Act of February 13, 1929, and appropriate relief.

The petitioner originally filed a response to the petition for review and mandamus, to which were annexed exhibits showing the action of the Secretary of the Interior in denying respondent's claim. (R. 5.) The response was withdrawn by stipulation (R. 19), leaving the exhibits annexed to be considered by the court and the petitioner answered. The answer (R. 20) alleged, in substance, that the various Secretaries of the Interior, in the exercise of the discretion confided in them by the Act, refused to allow claims based upon the payment of interest upon borrowed money, and that respondent's claim had therefore been disallowed. The reasons for this conclusion were set forth in the answer. The case was heard and determined upon the pleadings. As stated above, the judgment of the Supreme Court of the District of Columbia dismissing the petition was reversed by the court below.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon interest on borrowed money.

2. In holding that as a matter of law the petitioner was required to make an allowance for any

net loss sustained by the respondent because of interest paid on borrowed money.

3. In holding that the petitioner should determine as a matter of fact the net loss sustained by the respondent in the payment of interest on borrowed money.

4. In holding that petitioner's discretion under the Act of March 2, 1919, disallowing claims based upon interest paid on borrowed money, was eliminated by the Act of February 13, 1929.

5. In directing the Secretary to allow respondent's claim without determining whether the allowance of the claim would in his opinion be just and equitable.

SUMMARY OF ARGUMENT

1. As a matter of law, a claim based upon expenditures by the respondent for interest on borrowed money was not allowable, and the petitioner properly disallowed the portion of respondent's claim based thereon.

2. Even if the allowance of respondent's claim was not prohibited as a matter of law, the petitioner had discretion to disallow the claim under the Act of March 2, 1919, which was not removed by the Act of February 13, 1929. If the petitioner has exercised that discretion it may not be reviewed. If he has not exercised it, the court below erred in directing him to proceed in such a manner as to deprive him of the opportunity to exercise it.

ARGUMENT

I

THE PETITIONER'S ACTION IN DISALLOWING RESPONDENT'S CLAIM WAS CORRECT AS A MATTER OF LAW

If, as we contend, the petitioner was justified as a matter of law in disallowing respondent's claim based upon interest paid on money borrowed by the respondent, it will be unnecessary to consider the extent of petitioner's discretion in connection with the allowance or disallowance of claims under the Act of March 2, 1919, and whether that discretion has been affected by the Act of February 13, 1929. Accordingly, the question of discretion and the effect of the decisions of this Court in *Work* v. *Rives*, 267 U. S. 175, and *Work* v. *Chestatee Corporation*, 267 U. S. 185 (dealing with the subject of petitioner's discretion under the Act of March 2, 1919) are dealt with in the second division of the argument.

The answer alleges that the petitioner and his predecessors have consistently held that no claim for interest paid upon money borrowed by a claimant to be used by him for the purposes mentioned in the Act of March 2, 1919, could be allowed under the statute, and that respondent's claim was, accordingly, disallowed.

We submit that this disposition of respondent's claim was based upon a correct interpretation of the statute. The Act of March 2, 1919, expressly limited the Secretary of the Interior to the adjust-

ment and payment of "net losses" arising out of expenditures "for or upon property" containing one of the minerals mentioned in the Act. The Secretary was expressly forbidden to include any profits of any kind in the allowance of any claim.

It is clear that interest paid on money borrowed is not an expenditure "for or upon property" containing a war mineral. It is an expenditure for the use of money, and the money borrowed, of course, might be expended for or upon property, but the plain terms of the statute limited the claims which the Secretary could allow, and did not include any expenditure for interest on borrowed money. While such expenditure might well be a loss to the claimant, Congress did not provide that all losses should be paid, and the court below erred in attempting to extend the scope of the gratuity provided by the statute. The decision of the court below was based upon its previous disposition of this case in *Wesby v. United States ex rel. Chestatee Corporation*, 54 App. D. C. 380, in which the court said at page 382:

"Being, therefore, an element of the expenditure [illegible] We think that in equity and justice the interest paid or obligated to be paid in this case should be allowed. (See [illegible] would show more clearly that the court [illegible] decision on its own view of what [illegible] and equitable provision for [illegible] upon the limitations of the statute.

The Act of March 2, 1919, makes no provision for the allowance of interest to claimants who expended their own money for or upon property containing war minerals and thereby lost the use of that money. The answer alleges that the Secretaries of the Interior have consistently refused to allow interest to claimants for such use of their own money. (R. 24.) This action was clearly in accord with the general rule that interest is not to be allowed upon claims against the United States, in the absence of a contract providing for such interest or statutory authority therefor. *United States* v. *Sherman*, 98 U. S. 565; *Tillson* v. *United States*, 100 U. S. 43; *United States* v. *North American Co.*, 253 U. S. 330. The allowance of interest in condemnation cases is based upon the implied contract to make just compensation arising out of the taking of private property by the Government. There is no similarity between the situation of one whose property has been taken by condemnation and a claimant under the Act of March 2, 1919, who, stimulated by war-time agencies of the United States, made expenditures for the purpose of producing certain essential minerals, anticipating that the war would continue and the venture would be profitable. In making provision for such persons in the Act of March 2, 1919, Congress was not providing a statutory substitute for just compensation but a "gratuity based on equitable

and moral considerations." *Work* v. *Rives, supra.* Since a claimant who expended his own funds for or upon property containing war minerals was not entitled to interest, it seems clear that a claimant in a less favorable position financially, who borrowed money for the same purpose, should not be allowed to receive such interest. It can not be presumed that Congress intended to place borrowed capital in a preferred position over capital which was not borrowed. Nothing in the statute indicates any such intention.

Respondent relies, in support of its claim that interest should be paid, upon *United States* v. *New York,* 160 U. S. 598. That case was distinguished by this Court in *Work* v. *Chestatee Corporation, supra.* It involved the construction of a statute by which the Secretary of the Treasury was directed to pay to the Governor of any State the costs, charges, and expenses properly incurred by such State for enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting its troops employed in aiding to suppress the insurrection against the United States. It was held that under that statute the State could recover interest on bonds issued by it to do the things provided for in the Act. The statute provided for reimbursement to the States for expenses which might properly have been borne by the United States in the first instance. There can be no doubt that money expended by the respondent for interest on bor-

rowed money was an expense, but the Act of March 2, 1919, did not, as did the statute considered in *United States* v. *New York*, provide for the payment of all expenses, and that dissimilarity between the statutory provisions makes the cases clearly distinguishable. Indeed, in *Work* v. *Chestatee Corporation*, this Court, distinguishing the cases, said:

> * * * and it is doubtful whether the conclusion as to interest in such case would be applicable to the claim made by the relator, even if we could hear it on its merits.

While it is our contention that the statute clearly required the action which the Secretary took with respect to respondent's claim, we also contend that even if the terms of the statute did not expressly require this disposition of the claim, the uniform action of the Secretaries of the Interior in disallowing similar claims is an administrative construction of the statute (which certainly does not in terms require the allowance of such claims), which should not be disturbed unless it is clearly wrong. *United States* v. *Finnell*, 185 U. S. 236; *Hall* v. *Payne*, 254 U. S. 343.

The statute related to the granting of a new and unusual gratuity, the limitations of which were not explicitly prescribed, and it invited and required administrative construction. The construction of statutes, general in their directions, has been held to be for the Secretary, without review by man-

damus. *Hall* v. *Payne*, *supra*; *Wilbur* v. *United States*, 281 U. S. 206; *Alaska Smokeless Coal Co.* v. *Lane*, 250 U. S. 549; *Ness* v. *Fisher*, 223 U. S. 683, 693. The provision of the Act of February 13, 1929, authorizing a review of questions of law, certainly did not authorize the court below to reverse the decision of the petitioner unless it clearly violated the express provisions of the statute. Since the petitioner's decision was based upon a correct construction of the statute, or, at least, upon a permissible interpretation, the reversal was error.

The Secretary of the Interior requested the opinion of the Attorney General as to whether he was authorized to adjust, liquidate, and pay net losses sustained in the purchase of real estate and losses arising from the payment of interest on borrowed money. Attorney General Sargent, in an opinion rendered on March 23, 1928, advised:

> I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. (35 Op. A. G. 426, 430.)

The decision upon respondent's claim by one of petitioner's predecessors was among the earliest decisions under the Act and in making it the Secretary said "If the Congress contemplated the payment of interest upon this claim * * * then this award of course does not preclude remedial action by the Congress of the United States acting directly." (R. 26.)

Although the construction placed upon the statute by the several Secretaries of the Interior was apparently called to the attention of Congress (see, for example, page 21 of Secretary Payne's response to Senate Resolution 429, Senate Document 385, 66th Cong., 3d sess., listing amounts of claims disallowed and reasons for their disallowance in which list the claim of respondent is apparently included), no statute has been passed which shows expressly or by inference that Congress disapproved the construction of the Act by the Secretaries of the Interior. By this long acquiescence in the administrative construction of the Act it is submitted that Congress has given its approval thereto.

The legislative history of the Act of February 13, 1929, shows that it was not designed to change the construction placed upon the Act of March 2, 1919, by successive Secretaries of the Interior. On January 28, 1929, Mr. Robsion, on behalf of the Committee on Mines and Mining, submitted a report (H. Rep. 2250, 70th Cong., 2d sess.) to the House of Representatives in connection with a pending Bill (H. R. 15861), which subsequently was enacted and approved as the Act of February 13, 1929. Mr. Robsion said in part:

> The bill does not enlarge in any manner the scope of existing war minerals legislation, nor does it permit the filing of any new claims. It simply confers upon the Supreme Court of the District of Columbia, the appel-

late courts, and the Supreme Court of the United States jurisdiction to pass upon questions of law for the guidance of the Secretary of the Interior for his further administration of the war minerals act.

It does not take the administration of the war minerals act away from the Secretary of the Interior as provided for in the original act.

Various attempts to enact legislation specifically designed to reverse the construction of the Act by the Secretaries of the Interior were unsuccessful. On March 25, 1926, Senator Oddie, on behalf of the Committee on Mines and Mining, submitted a favorable report (S. Rep. 475, 69th Cong., 1st sess.) to the Senate upon a bill (S. 3641) to amend the Act of March 2, 1919, which proposed bill contained the following provision:

SEC. 3. That the Secretary of the Interior is hereby authorized and directed to include in his adjustments and payments in each claim all items of net loss, including moneys expended or obligations incurred for or in connection with the purchase or lease of property and *money paid and due to be paid for interest on borrowed capital.* (Italics ours.)

This bill did not pass.

Just prior to the passage of the Act of February 12, 1929, House Bill 14131 was on the calendar but was withdrawn in favor of House Bill 15861, which was subsequently enacted as the Act of Feb-

ruary 13, 1929. H. R. 14131 contained the following provisions:

> That section 5 of the Act entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, commonly referred to as the War Minerals Relief Act, is hereby amended to authorize and direct the Secretary of the Interior to determine, adjust, liquidate, and pay net losses resulting from moneys expended or obligations incurred for the purchase or lease of property acquired for the production of, or in the preparation to produce, either manganese, chrome, pyrites, or tungsten; and *also to determine, adjust, liquidate, and pay net losses arising from money paid or due to be paid for interest on borrowed capital not to exceed the lawful rate of interest in the State where the obligation was incurred.* (Italics ours.)

If Congress had intended to change the construction of the Act which had been followed for a decade by successive Secretaries, that could have been done by a simple change in the substantive provisions of the law. These provisions were not changed and the court review was of questions of law determined under the statute without change. The statute was correctly interpreted by the petitioner. His action in disallowing the respondent's claim was correct. Therefore, it was error for the court below to reverse the petitioner's determination.

II

UNDER THE ACT OF MARCH 2, 1919, THE PETITIONER WAS VESTED WITH DISCRETION IN THE ALLOWANCE AND DISALLOWANCE OF CLAIMS WHICH WAS NOT REMOVED BY THE ACT OF FEBRUARY 13, 1929

Assuming that the statute did not require the disallowance of the claim for interest, it is our contention that under the Act of March 2, 1919, the Secretary of the Interior had a wide discretion in the allowance of claims, based upon his determination of whether the allowance of particular claims would be just and equitable. The extent and nature of this discretion was considered by this Court in *Work* v. *Rives*, 267 U. S. 175, and *Work* v. *Chestatee Corporation*, 267 U. S. 185. In the brief for the petitioner in No. 66, *Ray Lyman Wilbur, as Secretary of the Interior*, v. *United States of America ex rel. The Vindicator Consolidated Gold Mining Company*, we have set forth our contention that the Act of February 13, 1929, did not affect the discretion conferred by the Act of March 2, 1919. That argument applies with equal force to the present case, and we shall not burden the Court by repeating it here.

If, as we contend, petitioner has discretion to allow only such claims as he considers to be just and equitable, he might well determine, if he has not already done so, that the allowance of respondent's claim would be unjust and inequitable. Since a claimant who uses his own funds for the purpose of producing the minerals mentioned in the Act of

March 2, 1919, is not to receive interest, it would seem to be unfair and inequitable to allow such interest to a claimant who has expended borrowed capital when one who has used his own funds can have no such allowance.

As in No. 66, it is not entirely clear from the answer whether petitioner has already exercised his discretion and has disallowed respondent's claim because he has determined that its allowance would be unjust and inequitable. If the answer may be said to allege that such discretion has been exercised, it was clearly error for the court below to review it and apply its own view of what would be just and equitable to a subject left entirely to the Secretary. If, on the other hand, the petitioner has not yet exercised his discretion, the court below erred in directing him to ascertain the amount of interest paid and then allow the claim, for in doing so the court below deprived the petitioner, in advance, of his opportunity to exercise his discretion.

CONCLUSION

The judgment of the Court of Appeals of the District of Columbia is erroneous and should be reversed.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
WHITNEY NORTH SEYMOUR,
G. A. IVERSON,
Special Assistants to the Attorney General.
E. C. FINNEY,
Solicitor, Interior Department.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to

the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen; and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance; *And provided further,* That no claims shall be paid

unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other

things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

ACT OF NOVEMBER 23, 1921, C. 137, 42 STAT. 322

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

ACT OF FEBRUARY 13, 1929, c. 182, 45 STAT. 1166.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and de-

termine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, A CORPORATION

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM, 1930

No. 936

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, A CORPORATION

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

GENERAL STATEMENT

What was said in response to the petition in Wilbur, as Secretary of the Interior, petitioner, v. The United States of America, ex rel., Vindicator Consolidated Gold Mining Company, applies to the petition here in particulars as follows:

1. Jurisdiction.

2. The former appeal in this case was decided on the issue of power alone.

3. The "just compensation" provisions of the Act of October 5, 1918 (copied in the appendix to the response in that case) are material.

4. While legislative and administrative construction need not be resorted to, the statute of March 2, 1919, here directly involved being unambiguous, the legislative history fully supports the judgment of the Court of Appeals in this case. Reference is made to the appendix to the response of the Vindicator Company for the history and for the statutes other than those copied by petitioner.

Otherwise this case involves a totally different question from that involved in Wilbur v. The United States, ex rel. Vindicator, above. The Vindicator case involves losses due to the purchase of property. The present case involves losses due to interest paid and we ask that this particular case stand on its own merits and be not confused with other litigation.

ARGUMENT

CORRECTION OF ERRORS IN PETITION

The claim of petitioner that the Court of Appeals took away any discretion from the Secretary other than the discretion he had before the Act of February 13, 1929 to decide purely legal questions, lacks support in the record. The trial judge in the instant case said the Secretary had "properly adjudicated" "the questions of law" (Tr. 40). The Secretary as a legal conclusion said: "It is not believed that the Act contem-

plates the payment of interest on borrowed capital" (Tr. 14). The Court of Appeals held that interest paid on borrowed capital "should be allowed" (Tr. 46). These conclusions of the Secretary, the trial court, and the Court of Appeals deal with a question of law only and the judgment here sought to be reviewed in no way lessens the discretion of the Secretary in dealing with facts.

The conclusion stated at the bottom of page 8 of the petition is therefore erroneous.

THIS IS NOT A CASE OF GENERAL INTEREST

It is not believed that the ex parte statement contained in the footnote (petition page 10) is pertinent; but even if it were, it is misleading in its implication that 111 claims contain items of interest which must be settled in accordance with the final judgment in this case. In an exhibit to petitioner's answer it is said:

> "In this particular case (emphasis ours) as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do unless the government should underwrite the venture. This, of course, was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount." (R. 18).

Again, it is stated:

"The activities of the government to induce Ashcraft and Wilkinson to finance claimant so that war needs might be met quickly and in large measure were personal, direct and effective." (R. 20). (Emphasis ours).

From the admissions above quoted it must be apparent that this is a "particular case" and stands out separately and distinctly as one where not only did the Secretary of the Interior stimulate production, but he personally requested and induced financial interests to lend the money necessary for the enlarged enterprise.

JUST COMPENSATION INCLUDES INTEREST AS SUCH

Waite v. United States, decided February 24, 1931, 75 L. ed. pam. 402; Seaboard Air Line Ry. Co. v. United States, 261 U. S. 299.

EXPENDITURES FOR BORROWED CAPITAL ARE ALLOWABLE

United States v. New York, 160 U. S. 598.

On the former appeal of this case, 267 U. S. 185, this Court stating the issue in United States v. New York, above, said: "The issue, therefore, was merely a question of law." Since the Act of February 13, 1929, the issue here, like that in the New York Case, is "merely a question of law."

In the New York Case money had been borrowed, part of which was from the State's own funds, and Congress authorized the repayment of "costs, charges and expenses." Interest paid on all these borrowed funds was held to be included by this language. Congress here said that "net losses" are to be paid. That money

was borrowed, interest paid thereon, and that such expenditures were lost is admitted.

Here fitting the exact language of the statute, expenditures were made in order to get money with which to prepare to produce, and to produce, pyrites for the urgent needs of the government. Respondent got no profit either on its capital or for its services, and all it asks is the return of its net losses incurred; and that in determining such net losses all its expenditures and all its obligations incurred should be, as the statute says, considered and applied in arriving at the total amount. That respondent is entitled to this is shown by the New York case above.

At page 624, further discussing the question in that case, the court said:

> "We are of opinion that the claim of the state for money paid on account of interest to the commissioners of the canal fund is not one against the United States for interest as such, but is a claim for costs, charges and expenses properly incurred and paid by the state in aid of the general government, and is embraced by the act of Congress declaring that the states would be indemnified by the general government for moneys so expended." (Emphasis supplied.)

Agreeing that the petition for the writ may be presented at the first opportunity, it is respectfully submitted that the petition should be denied.

MARION SMITH
EDGAR WATKINS
MAC ASBILL
Counsel for Respondent
Atlanta, Georgia.

May 14th, 1931.

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Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent

BRIEF FOR RESPONDENT

By
EDGAR WATKINS,
MARION SMITH,
Atlanta, Georgia

MAC ASBILL,
J. C. TRIMBLE,
Of Counsel

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5. And "no claim shall be allowed or paid * * * unless it shall appear to the satisfaction of said Secretary that the expenditures so made or obligations so incurred were made in good faith for or upon property which contained * * * pyrites * * * in sufficient quantities to be of commercial importance" ____ 24

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Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent

BRIEF FOR RESPONDENT

JURISDICTION

This cause was brought under the authority of the Act of February 13, 1929, on the relation of the Chestatee Pyrites & Chemical Corporation in the Supreme Court of the District of Columbia, which Court held that the Secretary of the Interior there made Respondent had "properly adjudicated" "the

questions of law" and "the petition for review and mandamus" was dismissed (R. 27).

On appeal to the Court of Appeals of the District the trial Court was reversed. [See opinion record 30-33, *United States ex rel. Chestatee Pyrites & Chemical Corporation v. Wilbur*, 60 *App. D. C.*....., 47 *F*; (2*d*) 424.]

Secretary Wilbur petitioned this Court for its writ of certiorari which was granted.

If the Petitioner were correct as argued in his brief herein that the Act of 1929 only authorizes advisory opinions this Court would under the authority of *Federal Radio Com. v. General Electric Co.*, 281 *U. S.* 464, 469, and similar cases, be without jurisdiction. However, as this Act gives full jurisdiction to decide questions of law and requires the Court's decision to be certified to and followed by the Secretary, there is jurisdiction of this writ.

ISSUE

Respondent here filed a claim with the Secretary of the Interior for its "net losses" incurred as authorized by the Act of March 2, 1919 (see Appendix 6 and c. 94, 40 Stat. 1272, 1274), and, quoting from the opinion of the Court of Appeals:

> "The sole question presented is whether interest paid or agreed to be paid by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that act, the Secretary should recognize and pay." (R. 30.)

APPENDIX

We have in an Appendix filed herewith given opportunity to the Court to inform itself of the legislative history. We do not concede that any resort to this history other than the statutes is permissible in this case; but, inasmuch as Petitioner makes reference thereto, we discuss such history briefly herein and have assembled facts that will enable the Court to have accessible adequate statements thereof.

SUMMARY OF ARGUMENT

1. Losses sustained by payments and obligations to make payments for money borrowed are losses the net amount of which the Act of March 2, 1919, provides should be adjusted, liquidated and paid.

2. Construing, as should be done, all the Acts of the Congress relating to the same subject as that of the Act of 1919, the principle just stated is further supported.

3. Debates in the Congress and proceedings and reports of committees thereof should not be resorted to here; but, if resort thereto be had, there is confirmation of the construction stated above.

4. The Act of February 18, 1929, under authority of which this proceeding was brought, gives power to the judiciary to decide questions of law and to certify such decisions to the Petitioner who will be bound thereby.

CHRONOLOGICAL HISTORY OF THE CASE

When on the 6th day of April, 1917, the Congress declared that war existed between the United States and the Imperial Government of Germany, it was found that there was urgent need for many minerals which had not theretofore been produced in the United States in sufficient quantities to meet this need.

Therefore legislation was proposed in the Congress which, after long discussion, resulted in the Act of October 5, 1918. (See Appendix 2.) Pending the consideration of this Act the Cabinet Officers were not idle and the Secretary of the Interior, Hon. Franklin K. Lane, was especially active in urging the production of the needed minerals among which was pyrites.

Mr. Secretary Lane promptly after the declaration of war, toured the section where pyrites ores existed, had a map thereof made and selected "a very live man" to see that "some pyrites is developed," and that man "developed five mines." The Secretary describing this to a committee of the Congress about March 25, 1918, said this development was possible "provided that the man who develops the small deposit in the United States can be assured that he will get his money out of the investment" (Appendix 10, 11).

Mr. Secretary Lane's agent, the "very live man," Mr. Callaway, discussed the situation with George L. Pratt, an officer of Respondent, and asked for a

statement of the properties (Appendix 11, 12). Mr. Pratt, foreseeing the consequences which later developed, was disinclined to enlarge his enterprise and on July 18, 1917, he discussed in a memorandum furnished at the request of Mr. Callaway the character of the properties, the danger of complying with the request for enlargement, and stated what he thought the Government should do (Appendix 12 to 20). Among the things he asked should be done was—

> "Fifth. Underwrite in some way the hazard of mining risk which now seems warranted on account of the urgent necessity of heavy tonnage of ore, but which would not seem to be justified under sound conservative business principles in normal times." (Appendix 19.)

The Petitioner here in his answer shows:

> "In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This of course was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financi g him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount." (R. 12.)

Further in this report it was said:

> "The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in

large measure, were personal, direct, and effective." (R. 14.)

In another part of the record here Petitioner shows the activities of Mr. Secretary Lane by quoting from a finding of the Department of the Interior as follows:

> "If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the *biggest production of pyrites in the entire country*, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted." (R. 17.) (Emphasis supplied.)

This report was approved by the Secretary (R. 18).

Act October 5, 1918

The Congress on October 5, 1918, authorized the President to purchase or take over the means of meeting the needs of the Government, and provided that just compensation determined by the President should be paid and, if dispute arose as to the amount, suit could be filed. An appropriation of $50,000,000 was made (Appendix 34). The effective date of this Act being so near the Armistice and coming at a time when the Executive probably knew that the Armistice was near, was not enforced.

Act March 2, 1919

Many patriotic citizens, including the Respondent here, yielded to the demands of the Government and made expenditures, incurred obligations and increased production beyond the needs in the United States after the termination of the war. To meet the obligation of the Government resulting from these efforts of the Executive Departments and as supplementing the Act of October 5, 1918, the Congress passed the Act of March 2, 1919. (Appendix 6.)

Respondent Files Its Claim

Respondent, the Chestatee Pyrites & Chemical Corporation, filed its claim number one with the Secretary of the Interior. The Secretary appointed a commission to act on all claims and at first this commission sought by a method of proration to determine expenditures before and after the date of the declaration of the existence of war. In this plan no distinction was made between losses for money paid and obligations incurred for borrowed money and other losses.

Subsequent Secretaries changed the plan of arriving at net losses and sought to determine all losses and then deduct from such losses such items as the Secretary thought were not included within the meaning of the statute. Among other deductions made was that shown in this record p. 17.

An Appeal Was Made to the Congress

Respondent and other claimants were dissatisfied with the niggardly allowances made by the commis-

sion so appointed and appealed to the Congress. H. J. Res. 170 was introduced and hearings thereon had. At the time of the hearings which began October 22, 1919, no issue was made before the Congress as to interest because that issue had not at that time arisen.

The House Committee Criticized the Administration of the Act

On March 25, 1920, the Committee on Mines and Mining said:

> "The committee is of the opinion that the commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the act, and the application of the provisions of the law to the facts."

The Committee then quoted the Act of March 2, 1919, and said that the language of the Act was:

> "* * * clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim."

The Committee then quoted decisions of this Court, including *United States v. State of New York*, 160 U. S. 598, and concluded by saying that,

> "For the reasons above stated the committee has not thought it necessary to amend the original act * * *." (See Report in full, Appendix 28.)

The amendment of November 23, 1921, was later passed (Appendix 29).

Respondent Appeals to the Courts

In 1923 Respondent here filed its petition in the Supreme Court of the District of Columbia seeking a writ of mandamus to compel the Secretary of the Interior to pay its net losses for moneys expended in payment of interest on borrowed money and obligations incurred therefor. The Supreme Court of the District on the 9th day of January, 1924, sustained the demurrer of the Chestatee Pyrites & Chemical Corporation to the answer of the Secretary of the Interior and held that it was erroneous for the Secretary to deny the losses suffered by the Respondent here for the payments made for the use of borrowed money and obligations therefor. (See Opinion in full, Appendix 30.) The Secretary took an appeal to the Court of Appeals of the District of Columbia and the lower court was there affirmed. *Work v. United States ex rel., Chestatee Pyrites & Chemical Corporation*, 54 *App. D. C.* 380, 298 *F.* 889.

While these two decisions in favor of Respondent remained unreversed, and on February 22, 1924, the Secretary of the Interior wrote to the Chairman of the appropriate committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia awarding a writ of mandamus to Respondent, and appended to show that the limited appropriation of $2,500,000 was inadequate if the decisions of the Supreme Court and of the Court of Appeals of the District stood (Appendix 32). Following this letter, and on the 7th day of June, 1924, the Congress showed, we submit, an approval of the decisions of the Su-

preme Court of the District and of the Court of Appeals by striking the limitation of $8,500,000 and leaving in force the original appropriation of $50,000,000. (See Act June 7, 1924, Appendix 34.) It will be recalled that the Act of 1918 carried an appropriation of $50,000,000 and that the Act of 1919 reduced this appropriation to $8,500,000.

Subsequently the decision of the Court of Appeals in Respondent's case was brought here and this Court held that the Secretary of the Interior having final discretion, no jurisdiction existed in the Supreme Court of the District to award the writ of mandamus and the Court of Appeals was reversed. *Work v. United States ex rel., Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

In order to give the courts jurisdiction appeal was again made to Congress and the Act of February 18, 1929, was passed, conferring jurisdiction in this and like cases

> "* * * to review the final decision of the Secretary of the Interior upon any question of law,"

leaving the Secretary the same discretion as formerly

> "on all questions of fact."

After the passage of the Act of February 18, 1929, and as authorized thereby, Respondent filed its petition for review and mandamus in the Supreme Court of the District. A response and later an answer was filed by the Secretary, Petitioner here, with exhibits attached showing the facts, and the cause was determined by the Court on demurrer to

the answer. The District Supreme Court held that the Secretary of the Interior had correctly adjudicated the questions of law (R. 27). An appeal was taken to the Court of Appeals of the District where the trial Court was reversed in an opinion by Mr. Justice Wheat (R. 30) and thereafter this writ was granted.

ARGUMENT

The Secretary in his brief herein relies on two propositions which may be stated as, (1) the contention that the Act of February 13, 1929 (Appendix 53), does not authorize this review, and (2) that the Secretary's decision was correct as a matter of law.

A. The Act of February 13, 1929 Authorized this Proceeding *

The Court of Appeals was entirely correct in saying that the purpose of that Act was to give the Court authority to decide whether the construction of the law by the Secretary was correct, and in adding

> " * * * if that was not its purpose then the statute is meaningless."

That such was the purpose admits of no doubt. The express provision of the Act is that a claimant

> "* * * may * * * petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen," etc.

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*This proposition is also discussed in Respondent's brief in Docket 66.

Unless this review is meaningless the statute authorizes the Court to determine whether the Secretary has correctly construed the question of law and the Secretary must follow this determination. For this Congress expressly provided. The fourth section of the Act of 1929 requires that the Clerk

> "* * * shall, without delay, certify to the Secretary of the Interior the final judgment or decree therein, *whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.*" (Emphasis supplied.)

The record of the Department of the Interior fully supports our contention with reference to the Construction of the Act of 1929.

The amount of Respondent's claim, said a former Secretary, "has been computed and determined and is known"; (post 18) therefore, there is left no room for the exercise of discretion.

When the Act of 1929 was pending in the Congress, Honorable Edward C. Finney, Assistant Secretary of the Interior and counsel in this case (R. 6) stated that after a "determination * * * it becomes our duty to carry out the law as construed by the courts * * *, so we prepared a proposed report to the committee expressing that view; * * * and our proposed report was to the effect that we favored it" (Appendix 43).

He was specifically discussing before the committee the legal issue as to the right of claimants to recover losses of "interest paid and obligated to be paid" and he answering a question, reiterated the

opinion of the Department by agreeing that it "looks with favor upon the enactment of this legislation" and that he "would be very glad" to have the "question of law" "settled by the courts." (Id. 44.) The attitude of the House Committee is shown by a quotation from the hearings before the Committee on Mines and Mining at the second session of the Seventieth Congress on H. R. 15861:

> "MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.
>
> "THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace interest on capital cost, cost *for* the purchase of property.
>
> "MR VINSON. Interest and capital invested.
>
> "THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.
>
> "MR. VINSON. As a matter of law.
>
> "THE CHAIRMAN. As a matter of law." (Appendix 48.)

Hon. John H. Edwards, Assistant Secretary of the Interior, told the Congressional Committee:

> "The Interior Department is willing at all times for questions of law to be determined by the courts. If the Department of the Interior has misconstrued an act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an

act. Those differences are never settled until some court settles them." (Appendix 50.)

Mr. Edwards also showed that the claim here before the Court with one other, that for purchase of property, presented the mischief of the old law which the Act of 1929 was to remedy, and he said:

> "If the Department of the Interior has misconstrued the present law, then we have denied to claimants that which they are rightfully entitled to have under a proper construction." (Appendix 50.)

Further:

> "MR. VINSON. And *the opinion of the court would be the final settlement of this matter for all time to come?*
>
> "MR. EDWARDS. *There is no question about it,* because it would remove from the realm of controversy and doubt the question. The *Interior Department* as well as the claimants would have to accept that as a *finality.* (Emphasis supplied.) (Appendix 52.)

Respondent below, Petitioner here, filed first a response to the rule to show cause stating the issue to be:

> "Whether or not one who was engaged in producing or preparing to produce any of the minerals named in said act and sustained a net loss on account of, or including, interest paid on borrowed money, or indebtedness applied as to capital (sic) compliance with its provisions is entitled to have such interest loss reimbursed." (R. 5, 6.)

and stated further:

> "Under the act of February 13, 1929 (Public No. 738, 70th Congress), this court is vested

with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions." (R. 6.)

Respondent's claim was "computed and known," but;

> "The unusual and purely fortuitous circumstance that the character of this jurisdictional limitation on the power of the Commission chances to be such that the giving of a correct construction to it must result in determining the character of the decision which the Commission must render when the case is returned to it cannot affect the power of this court or that of the lower courts to define what that jurisdiction is under the act of Congress, or the duty of the Commission to accept and act upon such definition when announced."

United States, ex rel. v. Interstate Commerce Commission, 246 *U. S.* 638, 644, 645.

B. Interest Paid for Borrowed Money, as Well as Obligations Incurred Therefor, Is a Loss

Analyzing the Act of March 2, 1919 *

Respondent is entitled to be paid,

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*The statute being "a remedial one * * * should be construed liberally to carry out the wise and salutary purposes of its enactment."

Stewart v. Kahn, 78 *U. S.*, 11 *Wall.* 493, 504; *Monongahela Nav. Co. v. United States*, 148 *U. S.* 312, 326. The Congressional Committee cited this rule and these authorities (Appendix 28).

1. "Such net losses as" it has suffered "by reason of producing or preparing to produce * * * pyrites;"

2. If such losses were incurred in compliance with the request or demand of the Department of the Interior "* * * to supply the urgent needs of the Nation in the prosecution of the war;" and

3. In adjudicating and paying such "net losses" the Secretary shall fix the amount at what is just and equitable.

Explanatory Provisos

4. Only claims filed within three months from the approval of the Act shall be considered;

5. And "no claim shall be allowed or paid * * * unless it shall appear to the satisfaction of said Secretary that the expenditures so made or obligations so incurred were made in good faith for or upon property which contained * * * pyrites * * * in sufficient quantities to be of commercial importance;" and

6. The losses must have accrued during the war; and

7. No profits could be "included in the allowance;" and

8. No speculative purposes could be recognized; and

9. Salvage must be deducted.

1.

"SUCH NET LOSSES AS" IT SUFFERED "BY REASON OF PRODUCING OR PREPARING TO PRODUCE * * * PYRITES."

That Respondent suffered net losses is not seriously questioned, in fact is admitted. A review of the facts of this claim was made by Mr. John Briar, Assistant Commissioner, who reported in detail the facts (Exhibit D, R. 8 and following). In this report Mr. Briar described how the award made theretofore was reached and stated that it was the purpose of the Department of the Interior to ascertain

> "* * * the loss during the stimulated period for which it is responsible by simply deducting from the expenditures for that period the items which must be disallowed, the receipts, and the salaries" (R. 9).

Further Mr. Briar said:

> "All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed capital." (R. 9.)

In setting up the items to be deducted an interest charge of $40,795.13 is deducted (R. 17).

When this case was here before (and this court may consider the record therein *) Secretary Work, who was the appellant there (see paragraph 15, R. 9, 10 of the former record) said:

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* *National Fire Ins. Co. v. Thompson*, 281 U. S. 331.

"* * * he denies that he and his predecessors in office have refused to adjudicate the relator's claim in so far as it involves expenditure and obligation for interest incurred, and, on the contrary, avers the fact to be that he has considered and adjudicated said claim and has found and determined that the *said items of interest, the amount of which has been computed and determined, and is known to him*, are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919, and November 23, 1921." (Emphasis supplied.)

At page 8 of Petitioner's brief herein it is said:

"It is clear that interest paid on money borrowed is not an expenditure 'for or upon property' containing a war mineral."

No such contention has heretofore been made by the Department of the Interior nor do we believe the contention now made is sound. This dogmatic statement might be true of some interest paid but is not true here. It has been definitely shown above that under the compulsory activities of the Secretary of the Interior and yielding judgment to patriotism, Respondent borrowed money which was used for and upon property which contained the largest bed of pyrites ores in the country and that such money was spent in good faith and legitimately in producing and preparing to produce this urgently needed ore.

The proviso, here for the first time urged in this connection, had as its purpose the designation of property possessing the needed mineral "in sufficient quantities to be of commercial importance," and did not and could not repeal the enacting clause but

specifically referred thereto by the words "expenditures *so made*" ("in producing or preparing to produce," language contained in the first sentence of the Act) or "obligations *so* incurred."

Petitioner says:

> "Congress did not provide that all losses should be paid * * *"

Congress did provide for the payment of "net losses" "suffered" "by reason of producing or preparing to produce" "pyrites." It is true that these losses must be suffered by reason of producing or *preparing* to produce from lands containing pyrites "in commercial quantities." Borrowing money, Mr. Secretary Lane thought, was a necessary preparation and that he was right is so obvious that this late contention now made evidences doubt by the author of the soundness of the argument of Petitioner's brief.

To borrow money when the Nation is imperiled and when urged by the Secretary of the Interior, to be used to pay labor, buy machinery, and make other expenditures necessary to make available to the Nation needed minerals certainly is "preparing to produce."

Petitioner in this part of his brief seeks to nullify a general right contained in an enacting clause by a proviso intended merely to describe the kind of mine from the operation of which the right arises. This is contrary to sound principles of statutory construction. In *United States v. Dickinson*, 40 *U. S.*, 15 *Pet.* 141, this Court held:

> "* * * where the enacting clause is general in its language and objects, and a proviso is after-

wards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms."

In *Ryan v. Carter*, 93 *U. S.* 78, 84, there was for construction a proviso somewhat similar to the one here, and this Court stated the rule:

> "There is no known rule of law requiring the court to interpret this proviso according to the literal import of the words employed when the evident intention of the Legislature is different. It may be that the words taken in their usual sense, would exclude the case of Dodier; but if it can be gathered, from a view of the whole law, and others in pari materia, that they were not used in that sense, and they admit of another meaning in harmony with the general scope of the statute, it will be adopted as the declaration of the will of Congress on the subject. Especially is this so when this construction withdraws the least number of cases from the operation of the statute."

Respondent's construction of the statute not only follows sound and authoritative principles, it is supported by legislation referring to the same matter. The enacting clause is not only general, it is repeated in the Act of November 23, 1921 (Appendix 29), where is repeated the language:

> "* * * all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein * * * *shall* be reimbursed such net losses as they have incurred and are in *jus-*

tice and equity entitled to from the appropriation of said act." (Emphasis supplied.) (Appendix 29.)

The Act of 1921 it must be remembered followed a report critical of the administration of the Act of 1919, in which report the Committee on Mines and Mining had told the Secretary that the Act of 1919 "is clear," that "if interpreted" as "such statutes should be interpreted" settlement of every "legitimate claim" could be had, the Secretary was informed of decisions of this Court and told that no amendment was necessary. However, to emphasize its purpose the mandatory words "shall be reimbursed" were stated in the Act of 1921 in repeating the enacting clause of the Act of 1919.

Respondent had a small enterprise, one inadequately financed for a large operation. The Nation told it that there was urgent need for more pyrites. Its officers demurred, lack of funds was apparent, Government aid was absolutely necessary, the Nation through Secretary Lane, obtained a lender to furnish such funds and the obligations to repay these funds was but a "preparation" for producing the urgently needed mineral. The Congress says these "obligations" incurred "shall be reimbursed," and that is what is here prayed.

The interpretation of the proviso now relied upon by Petitioner is thus shown to be unsound and it is also true that the words "for" and "upon" are themselves broad enough to include borrowing money and its inherent incident, paying interest thereon. Those administering the law held as early as 1919—

"There are numerous other instances where there have been—where the expenditure for offices—we have got some claims where they had offices in New York City and offices at the railroad station near the mine. We take those office expenses and allow them, but they are not upon the property, but they are for the property, and for that reason the use of that word 'for' is very essential in there * * *" (H. J. Res. 170 p. 152).

"For," we contend, means "in consideration of," "on account of"; the Secretary decided in 1919, and has not changed his decision since unless Petitioner's brief means such a change, that it means for "the benefit of." The word has all these meanings.

"Upon" and its synonym "on" include expenditures made for and on account of the development of land. In *Chambers v. Harrington*, 111 *U. S.* 350, 353, 354, this Court quoted with approval Judge Sawyer in the case of *M. & M. Co. v. Callison*, 5 *Sawy.*, 439, who said:

> "Work done outside of the claim, or *outside of any claim*, if done for the *purpose* and *as a means* of *prospecting* or *developing* the claim, as in cases of tunnels, drifts, etc., is as available for holding the claim, as if done within the boundaries of the claim itself." (Emphasis supplied.)

2.

IF SUCH LOSSES WERE INCURRED IN COMPLIANCE WITH THE REQUEST OR DEMAND OF THE DEPARTMENT OF THE INTERIOR "* * * TO SUPPLY THE URGENT NEEDS OF THE NATION IN THE PROSECUTION OF THE WAR."

We have shown above requests and demands, and Mr. Secretary Lane not only sent a "live" agent to Respondent, he himself urged Respondent and went so far as to induce Ashcraft, Wilkinson & Company to lend the money the interest on which Respondent paid and lost.

3.

IN ADJUDICATING AND PAYING SUCH "NET LOSSES" THE SECRETARY SHALL FIX THE AMOUNT AT WHAT IS JUST AND EQUITABLE.

As the facts are undisputed and as there is no room for discretion in computing the sum of figures and as the Secretary has "computed" and as the amount "is known to him" legally, justly and equitably these known net losses should be paid.

4.

ONLY CLAIMS FILED WITHIN THREE MONTHS FROM THE APPROVAL OF THE ACT SHALL BE CONSIDERED.

The claim here was filed within three days after the passage of the Act of March 2, 1918.

5.

AND "NO CLAIM SHALL BE ALLOWED OR PAID * * * UNLESS IT SHALL APPEAR TO THE SATISFACTION OF SAID SECRETARY THAT THE EXPENDITURES SO MADE OR OBLIGATIONS SO INCURRED WERE MADE IN GOOD FAITH FOR OR UPON PROPERTY WHICH CONTAINED * * * PYRITES * * * IN SUFFICIENT QUANTITIES TO BE OF COMMERCIAL IMPORTANCE."

This provision was to prevent the payment of losses suffered by exploiting lands containing none of the named minerals in commercial quantities. Here the Secretary urged the expenditures and aided in borrowing the money for which obligations were incurred and Respondent's good faith and the existence of pyrites in commercial quantities was shown and is not questioned. (See also above p. 6.)

6.

THE LOSSES MUST HAVE ACCRUED DURING THE WAR.

The date of the losses during the required statutory period was definitely fixed and is not questioned.

7.

NO PROFITS COULD BE "INCLUDED IN THE ALLOWANCE."

No profits were allowed, nor are any such here claimed.

8.

NO SPECULATIVE PURPOSES COULD BE RECOGNIZED.

No speculative purpose existed or was claimed by Petitioner to exist.

9.

SALVAGE MUST BE DEDUCTED.

All salvage was deducted (R. 14, 15).

Having met literally every provision of the statute, Respondent should be paid its net losses.

The unquestioned facts fitting so fully the unambiguous statute would seem to make further discussion unnecessary. We are not, however, without authority from this Court in support of the conclusion we seek. The case of *United States v. State of New York*, 160 *U. S.* 598, relied upon by the Committee

on Mines and Mining, the Supreme Court of the District in its opinion on the first suit filed by Appellant, and in this case by the Court of Appeals, we submit is directly in point. There is *since the Act of February* 13, 1929, legally an exact parallel between this and the New York case.

NEW YORK CASE	THIS CASE
A war was on.	A war was on.
A Cabinet Officer wired urging expenditures for urgent war need.	A Cabinet Officer sent agents and personally urged expenditures and the borrowing of money for urgent war needs.
New York borrowed money, some from one of its own agents and paid interest thereon.	Respondent borrowed from a source furnished by the Cabinet Officer and paid interest thereon.
The Act 1861 authorized the payment of "costs, charges and expenses *properly* incurred." (p. 624, opinion of the Court, New York case.)	The Act 1919 directed the Secretary "to adjust, liquidate, and pay such net losses as have been suffered" for "the expenditures so made or obligations so incurred," "*in good faith.*"
Under the Act of 1861 the Late Chief Justice Taft said: "The issue, therefore, was merely a *question of law* whether under the statute interest was payable and it was held that it was." (267 U. S. 181.)	Under the Act of 1929 courts have power "To review the final decision of the Secretary of the Interior upon any *question of law.*"

In delivering the opinion of the Court in the New York case, Mr. Justice Harlan, at page 620, said:

"It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage."

He further said:

"Liberally interpreted, it is clear that the acts * * * created on the part of the United States an obligation to indemnify the states of any costs, charges, and expenses properly incurred for the purposes expressed in the Act of 1861, the title of which shows that its object was 'to indemnify the states for expenses incurred by them in defense of the United States.'"

This Court sustained the claim of the State of New York for the interest, not only that paid the public but that actrued to its canal fund. "Expenses * * * incurred" in the statute under which New York recovered is no stronger than "money expended and obligations incurred," in the statute here.

Petitioner in his brief herein argues that the United States does not ordinarily pay interest. This proposition has no application here. We seek reimbursement for net losses and, following the New York case, such losses should be paid.

Petitioner also contends (Brief 11) that this Court distinguished this case from the New York case, above, and quotes part of a paragraph from the former opinion on this claim. The full paragraph should be read and when read it appears that following the quotation in the brief of Petitioner it was said:

"But it is not here on its merits. The question was one for the Secretary of the Interior to decide, and that finally."

The language quoted by Petitioner is a dictum and under the facts as they now are the circumstances of the two cases have changed and now are legally identical.

To illustrate:

This Court, speaking of the New York Statute, said that it "did not vest in the Secretary of the Treasury discretion finally to decide the extent of the indebtedness," and now it can be said of this case that there is no discretion in the Secretary "finally to decide" the law. The Court said, "the issue, therefore, was merely a question of law whether under the statute *interest* * *was payable* and it was held that it was," now, the issue is "merely a question of law." The question in the New York case, as here, is whether under the statute interest paid on borrowed money constitutes a loss, and this Court in the New York case answered in the affirmative.

Petitioner on brief delights to refer to Respondent's claim as "a new and unusual gratuity" (11). No honest man occupying a situation similar to the circumstances of this case would hesitate to recognize his obligation to repay the losses Respondent suffered. Here to serve their Nation and with no expectation of earning returns on the investment, the officers of the Respondent yielded their property, employed their credit and lost. To say it is a "new and

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* *By "interest" the court, as the context shows, meant interest paid on borrowed money.*

unusual gratuity" to recognize this obligation would, as said by this Court above, "be a reflection upon the patriotic motives of Congress."

The Act of March 2, 1919, is but a renewed and more specific promise to pay an honest obligation. As this Court said in *Allen v. Smith*, 173 *U. S.* 389, 402:

> "Such act was passed, as was held by this court, in *United States v. Realty Co.* 163 *U. S.* 427 (41:215), in *recognition of a moral obligation* to those who had put in their crop the previous year upon the faith of the bounty law then in existence. It was not so much a gift by the government as a reward paid in consideration of *expenses incurred* by the planters upon the faith of the government's promise to pay a bounty to the manufacturers and producers of sugar." (Emphasis supplied.)

Further holding that a "mere donation" "cannot be presumed to have been made even if it (the Congress) had the power," this Court said:

> "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, *production or manufacture* to be stimulated, or moral obligations to be recognized." (Emphasis supplied.)

THE CLAIM OF DISCRIMINATION BY PETITIONER

It is claimed on brief of Petitioner that to pay net losses for interest paid and lost discriminates against those claimants, if any, who were not compelled to

borrow money. This argument could have as legitimately been made in the New York case, above and its validity was in effect there denied.

If the Congress, as we believe has been demonstrated, directed the payment of Respondent's losses, Petitioner should not be relieved from obedience to that law even if it were true that Congress should have directed the payment of the net losses of some one else.

This argument of Petitioner assumes that Congress refused to pay interest as such. This assumption does not under the authorities cited in the next subdivision of this brief, we submit, follow. If, however, such assumption may properly be made the argument is one that should be addressed to the Congress. Here in clear and unambiguous language "net losses * * * suffered * * * by reason of producing or preparing to produce," shall be adjusted, liquidated and paid.

Respondent in producing and preparing to produce suffered net losses, and the Congress says it should be paid. If some other person should be paid and no provision therefor exists, the Government is not excused from paying those whom Congress says shall be paid.

There is support in the decision of the Supreme Court of the District on the first trial of this case (Appendix 30) and other authorities in this Court for the proposition that losses include interest as such. We do not here have to rely on that proposition, but we submit:

C. This Is a Claim for Losses and Not for Interest

By Act of October 5, 1918, section three, 40 Stat. 1009 (Appendix 2) the President of the United States was authorized to take over mines like that belonging to the Respondent and it was provided that when such mine was taken over

> "The United States shall make just compensation * * * for the taking over, use, occupation or operation * * * of any such necessaries * * * deposit, mine, or plant or part thereof."

And it was further provided in that Act, section three thereof, that

> "If the compensation so determined be unsatisfactory, * * * such person, firm, or corporation shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make up such amount as will be just compensation." (Appendix 3, seq.)

This definitely fixed "just compensation" as the legal right of the mine owner. While mines were not formally taken over by the President, in effect, the mines of Respondent and of others were taken over and operated by the President. As the Act of October 5, 1918, became a law just prior to the Armistice, it was found necessary to provide means for protecting and compensating those persons whose properties had in substance been taken over, although not in the form prescribed in the Act of October 5, 1918, and that is why in order to meet the Nation's obligation the Act of March 2, 1919, was passed.

There is nothing in the Act of March 2, 1919, that changes the measure of the right to recover of persons whose property had been actually or in effect taken over by the Government. There still remained the right to "just compensation," the right being to have, in the language of the amended statute, an adjustment that was "just and equitable" and to have payment for "net losses." "Net losses" and "just compensation" are essentially synonymous, and the words "just" and "equitable" are emphatic words requiring a liberal interpretation. There can be no doubt that "just compensation" includes all losses, and losses measure just compensation. In *Seaboard Air Line Railway Company v. United States*, 261 *U. S.* 299, this Court said:

> "The above rule referred to, that in the absence of agreement to pay or statute allowing it, the United States will not be held liable for interest on unpaid accounts and claims, does not apply here. The requirement that 'just compensation' shall be paid is comprehensive, and includes all elements, and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation * * *"

In *Brown v. United States*, 263 *U. S.* 78, pp. 86 and following, this Court uses interchangeably in argument the words "injury," "loss," "just compensation," and holds that property having been condemned by the United States, in measuring the compensation, interest would be allowed and this, said the Court, was

> "a palpably fair and reasonable method of performing the indispensable condition to the exer-

cise of the right of eminent domain, namely, the making of just compensation."

In *Brooks-Scanlon Corporation v. United States*, 265 *U. S.* 106, "the loss of use of money" was considered among losses, and where the Government's obligation was to protect against losses this Court (p. 126) said that such losses

> "* * * with other pertinent facts are to be taken into account and given proper weight to determine the amount claimant lost * * *; that is, the sum which will put it in as good a position pecuniarily as it would have been if its property had not been taken."

In support of this statement the Supreme Court cites numerous cases, including the Seaboard Air Line case, above, and if that rule be applied Respondent and others may recover interest as such because such recovery is necessary "to put it (them) in as good a position pecuniarily as it (they) would have been in" if they had not acceded to the requests and demands of the Government.

In *The Atlas*, 93 *U. S.* 302, 310, damages were held to require "that the measure of compensation shall be equal to the amount of injury received." Interest is allowed when compensation is to be made. *United States v. North Carolina*, 136 *U. S.* 211, 216.

"Just compensation," said this Court in *Seaboard Air Line R. Co. v. United States*, 261 *U. S.* 299, 304, 306, means:

> "* * * the full and perfect equivalent of the property taken * * *. The owner shall be put in as good position pecuniarily as he would have been if his property had not been taken * * *.

> The owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added."

And further:

> "The addition of interest allowed by the District Court is necessary in order that the owner shall not suffer loss and shall have just compensation to which he is entitled."

See also *Waite v. United States*, 282 *U. S.* 508; *Liggett & M. Tobacco Co. v. United States*, 274 *U. S.* 215.

It follows from these premises that interest is allowable against the United States by the words "legal damages" *ex vi termini*. If additional reason for this conclusion be needed, it will be found in the definite determination of this Court that the obligation of the United States to pay interest may be imposed by the name of damages as well as by the name of interest.

Interest may itself be allowed where the Act of Congress uses the word "damages." If legal damages include interest, losses similarly do.

In *The Santa Maria*, 10 *Wheat*, 431, 445, Mr. Justice Story, speaking for the Court, said:

> "Damages are often given by way of interest for the illegal seizure and detention of property; and, indeed, in cases of tort, if given at all, interest partakes of the very nature of damages."

It follows from these authorities, we respectfully submit, that a just and equitable determination of losses requires the payment of all losses, including interest lost; and when, as here, a claimant has paid out and lost money, the only question is, was the purpose of the payment to carry out the request and demand of the Government? As this purpose is admitted, it follows that the losses should be paid.

This conclusion but follows the law that substance rather than form governs especially when the right is for what is "just and equitable."

The New York case, above, and a proper construction of the statute, relieve Respondent from the necessity of relying on this argument but under the authorities just cited what Respondent paid and agreed to pay as interest constitutes a loss which the United States has specifically agreed to pay.

D. Congressional Construction Confirms Respondent's Contentions

Petitioner, Grasping at Every Possible Support for His Arguments, Herein Refers to Administrative Construction

It has hereinbefore been shown that Congress from the beginning criticized the administration of the Act of 1919.

Very shortly after the administration of that Act began, the House of Representatives, H. J. Res. 170, conducted elaborate investigations critical of the administration of this Act, and, on March 25, 1920, voiced its criticism in a report copied in the Appendix

hereto, page 28. Following this report, on November 23, 1921, the Act was liberalized (Appendix, post 29).

The Supreme Court of the District of Columbia and the Court of Appeals of the District sustaining Respondent's right to recover, the Secretary of the Interior called the matter to the attention of Congress and Congress enlarged the appropriation to meet these decisions. See letter of the Secretary, Appendix page 32; Act of June 7, 1924, Appendix page 34.

This Court having found that the decisions of the Court of Appeals and of the Supreme Court of the District in the former case should be reversed for lack of jurisdiction, Congress thereafter conferred jurisdiction with the Act of February 13, 1929. The learned counsel for the Secretary in this case contends that the Act of 1929 means practically nothing. If it means what the counsel for the Secretary contends, it was unnecessary for the Congress to do anything since no Court could disturb what the Secretary of the Interior was doing. Had Congress not acted there might have been some evidence of acquiescence in the rulings of the Secretary.

Instead of doing this, Congress, by the Act of 1929, provided that the decisions of the Secretary on law questions were not to be final but were to be subject to change by the courts. There is no room for logical argument that there is an implication of Congressional approval of the rulings of the Secretary then being made under this law.

Congress went even further, however, so far as this question of interest payments is concerned. It

selected as the courts which were to review the decision of the Secretary on this law question the courts which were already definitely committed to the opinion that the Secretary's ruling was wrong, and by the Act of 1929 gave these particular courts the power to override this legal ruling. It is interesting to note that some of the arguments here made by Petitioner not only were not made or relied on by the Secretary but are actually contrary to what the Secretary found.

The only possible implication as to what Congress expected these courts to do in their review of the Secretary's rulings on this particular point was that such courts would enforce what they had already published as their views. The whole implication, from the history of the legislation, is a Congressional disapproval of the Secretary's ruling in so far as they were against Respondent and an approval of the opinion of the courts of the District holding that Respondent should receive its "net losses" for interest paid and obligations therefor.

Respectfully submitted,

EDGAR WATKINS,

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Of Counsel

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent

APPENDIX TO BRIEF FOR RESPONDENT

By
EDGAR WATKINS,
MARION SMITH,
Atlanta, Georgia

MAC ASBILL,
J. C. TRIMBLE,
Of Counsel

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APPENDIX

LEGISLATIVE HISTORY

General Statement

The statutes for construction seem to us to be free from ambiguity and therefore there is no necessity for a resort to legislative history. If, however, such history should be looked to, we believe this Appendix furnishes an accurate and adequate statement thereof.

A state of war having been on the 6th day of April, 1917, declared to exist between the United States and the government of Germany, the need for war minerals in this country, most of which were imported from abroad, became immediately imperative. At the same time it became apparent that the government could not and should not rely upon the continuance of such importations. Not only were such importations largely shut off due to the activities of the German U-boats, but our ships and those of our allies which could otherwise have been used in their transportation were required to carry soldiers and supplies to France. So we were forced to produce these minerals in this country.

How best to accomplish such production was one of the vital questions that confronted the government in the early days of the war. Large sums were devoted to advertising the needs of the government in this respect and in encouraging and stimulating

immediate large-scale production of these minerals. Cabinet officers and other important agents of the Nation pleaded for such production. The question was discussed elaborately in Congress, beginning in the spring of 1918. The resulting bill was finally passed and approved October 5, 1918. This Act was entitled:

Act October 5, 1918

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act

The Act is printed 40 Stat. 1009, and following. In *Section* 1 thereof it is stated:

"By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * pyrites * * * as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid

substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 *and* 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including *just compensation* under section three."

Sections 7, 8 *and* 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the Act, which was upon the proclamation of peace by the President.

Sections 11 *and* 12 are not material to the issue here.

This Act in effect would have authorized the President or his agents to enter into whatsoever arrangements were deemed necessary for procuring an adequate supply of these war minerals. Had the war continued, the President under this Act would have been enabled fully to protect the men who answered the call of the Government to produce these minerals. However, as the Act was approved so near the date of the Armistice, it was never resorted to.

With the cessation of war, the demand for these war minerals practically ceased, and the producers were faced with immediate and heavy losses. How to give "just compensation" (Section 3, Act of Oct. 5, 1918, *supra*) to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government, was the question then presented to Congress.

Legislative History of the Act of March 2, 1919

After hearings, and on the 23d day of December, 1918, Senator Henderson introduced a bill entitled,

Title of Bill, Senate

"A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sus-

tained by investments preparatory to production of war minerals mentioned in said Act."

This was called Senate 5234, and was referred to the appropriate committee.

Bills in the House

In the House on December 24th, 1918, Mr. Foster introduced an identical bill, known as H. R. 13498, and this was referred to the Committee on Mines and Mining of the House.

On December 7th, 1918, Congressman Dent introduced a bill in the House, known as H. R. 13274, the purpose of which, as expressed in the title, was, "To provide relief where formal contracts have not been made in the manner required by law." This bill purported to authorize the Secretary of War to adjust and pay claims under contracts with the government for war supplies, where in the rush and hurry of the war, the requisite formalities had not been complied with. The moral obligation of the government to reimburse those who had lost because they had complied with the demand of their country was recognized, and the House debated whether to give the administration of the relief to the Secretary of War or to a newly created commission. On January 9th, 1919, the House passed the bill substantially as introduced, leaving the matter in the hands of the Secretary of War.

After three separate disagreements between the Conference Committees of the House and Senate an agreement was reached and the statute upon which

the claim of Respondent is based was passed and reads:

Section 5 of the Act of March 2, 1919, as Passed

"Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply.'

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appro-

priated by the said act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however*, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any man-

ner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

"That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

"Approved March 2, 1919."

Administration of the Act of 1919 Criticized

Respondent and others being dissatisfied, appealed to the Congress and H. J. Res. 170 was introduced

and hearings had thereon and a report of said hearings was printed as,

HEARINGS
BEFORE THE
COMMITTEE ON MINES AND MINING
House of Representatives

EXCERPTS
Sixty-sixth Congress
Second Session
on
H. J. Res. 170.
WASHINGTON
Government Printing Office
1920

"MR. HOWARD. Mr. Chairman, in order that the committee might know exactly what the Secretary did say, I will read it from a previous hearing. This is from Secretary Lane's testimony before this committee on this very particular matter upon which you gentlemen want information. It is only a couple of pages and I will read it. The hearings were held between March 25 and April 2, 1918. He said:

The Secretary of the Interior Urges Production and Aids in Financing

"When the war came on, however, it became necessary for us to find out how com-

pletely self-sufficient we were. Is the United States able to build a battleship completely for itself? Are we able to furnish all the minerals that go into a cannon, or armor plate, or a rifle, or tools? And so we have been making a more elaborate study of the resources of the United States to see how self-sufficient we could become. About a year ago I was in my office one day when Mr. Callaway, of LaGrange, Ga., whom probably some of you know, is one of the most successful business men of the South, the manager of three of the largest cotton mills, came into my office and said: "I want to get some war work to do. I am perfectly willing to come in as an office boy."

"I had recently been through the South and had made for myself a map of the mineral resources of the South, and was looking over it shortly before Mr. Callaway came in. I pointed out this map to him and said: "Here is something you can do. The Nation needs sulphuric acid; you need to develop your phosphate; why don't you develop some pyrites in the South? Here is a strip of country down through Georgia and Alabama, a territory you are familiar with, where you have grown up; why don't you see that some pyrite is developed there so that sulphuric acid can be developed right alongside of the phosphate, and so that ships that come from Spain with pyrite can be put into the business of carrying food over to the Allies and carry our own boys and munitions?"

"Callaway is a very live man, and he said: "I do not know about this thing. I never heard of the stuff, but if you say it is there I will see if I can not get it."

"That man has developed five mines since the middle of last year. He found it was necessary, in order to develop those mines, that roads should be built—to one of them 6 miles long—that a small branch railroad should be built to another. The men who owned these properties were men not familiar with matters of large finance; did not know how to go about getting out their products and getting the money for the railroad or the wagon road, and so he gave to those men his guidance and support, with the result that there has been that development, which is very promising. That is the kind of thing that can be done throughout the United States, provided you can give some kind of guaranty that the man who develops these new properties which are in competition with the materials which come from abroad where there are larger deposits, provided that the man who develops the small deposit in the United States can be assured that he will get his money out of the investment that he puts into the development of these mines.'

"MR. PRATT. Gentlemen, I want to make my statement as brief as possible. I told Mr. Callaway that we had given very careful consideration to the development of this pyrites property; that we knew what the demand for pyrites was; that we had not considered that we were justified in going into the matter of increased production to any greater extent than the investment represented by our financing contract, and the development of the property for a production of 25,000 tons per annum as our lease contract had contemplated.

"MR. LUHRING. This was all done before you talked to Mr. Callaway?

"MR. PRATT. The lease had been executed and construction work was under way.

"MR. LUHRING. The $200,000 loan had been arranged for?

"MR. PRATT. Yes, sir. Now, Mr. Callaway went into a great many matters and went over the property and noted the extent of the development work that had been done. He asked me to make a memorandum for him and stating such other things as might occur to me. Accordingly, on the 18th of June, 1917, I prepared a report for Mr. Callaway, which is in our record. It does not need to be read in full.

(The paper referred to follows:)

June 18, 1917.

CHESTATEE PYRITES MINES, LUMPKIN COUNTY, GA. MEMORANDUM FOR MR. FULLER E. CALLAWAY

Property.—900 acres in Lumpkin County, Ga., 7 miles east of Dahlonega, 20 miles northwest of Gainesville, 10 miles west of the Gainesville & Northwestern Railroad at Brookton (Hall County), 9 miles south of Cleveland (White County). The property lies on both sides of the Chestatee River, approximately 2 miles, and with riparian rights, all of the water power of the Chestatee River, a fall of approximately 45 feet on the company's property. The pyrites veins are shown by massive outcrops of "gozzan" and surface crosscuttings to be practically continuous throughout a distance of about 6,000 feet from the center of the property in southwesterly direction. No effort has been made to open the vein in northwesterly direction, al-

though surface indications and "float gozzan" in the "drift" clearly indicate its presence.

For fuller description see Bulletin No. 213, Series A, Economic Geology 24, the same being contributions to Economic Geology 1902, pages 62 and 63, also small property map hereto attached.

Original development.—By heavy outcropping of massive gozzan (in place), by "float gozzan" and by surface crosscutting, it has been shown that the vein is practically continuous in varying width approximately 6,000 feet southwest of the river, and by crosscutting has been shown to continue north of the river. Large three compartment working shaft has been sunk at angle of 54 degrees in the vein to depth of 205 feet (150 feet below the river in ore entire depth). Heavy outcrop on hilltop, 265 feet above the river, determines distance of vertical workings at this time to something over 400 feet below outcrop. Crosscutting at various levels and longitudinal workings about 500 feet all in ore have proved and shown average width of vein approximately 30 feet. Tunnel was driven into the vein about 27 feet above river level crosscutting "ore shoot" of high-grade lump ore, approximately 40 feet wide from wall to wall, 200 tons of lump ore was taken out from this tunnel, transported to Gainesville, thence to Atlanta by rail and one of the large sulphuric-acid works operated on this ore for sufficient length of time to prove its excellence for the manufacture of sulphuric acid. Recent additional underground developments consist of drift driven into the vein about 12 feet above river level across to the west wall, proving width of vein at this point about 46 feet from wall to wall, high-grade lump ore; curving to the southwest has been contin-

ued in the vein a distance, approximately, 150 feet. This heading about 200 feet northeast of the old tunnel above mentioned, and 350 feet north of the three compartment shaft, has blocked out or reasonably exposed large tonnage of high-grade lump ore available for sulphuric-acid works without treatment in concentration mill. Thorough expert investigation has been made, and all opinions are that the extent of the vein, the character and quality of the ore, are sufficient to warrant exploitation on large scale.

Recent development.—Having determined from exhaustive investigation outlined above that the extent of the vein and quality of the ore warranted further development and exploitation, Messrs. N. P. Pratt and George L. Pratt (Chestatee Pyrites & Chemical Corporation), have financed the enterprise to the extent of $250,000 without issue of bonds or other incumbrances upon either the property or improvements.

Construction and development work was begun in November, 1916, to develop the water power for generation of compressed air and electric current for the deepening of the present working shaft and driving additional drifts at lower levels; for the simultaneous upraising and sinking of main vertical working shaft at proper point to supply concentration mill and at such point as further underground working proves most advisable and on such plan as may be most suitable for the handling of the low-grade ores exposed by further workings; for driving a drift into the vein just above river adjacent to the power house, which drift will be continued as permanent drainage level and for engine and pipe lines, electric conductors, etc. Engi-

neering corps was also put into the field and completed survey made to final location for railroad connection to the Gainesville & Northwestern Railroad at Brookton.

The above work has been completed to the following extent: Dam developing approximately 1,000 horsepower is fully completed, forebay flume and penstock fully completed, foundations, draft tubes, and tail race for two pair high-speed horizontal turbines completed. One pair has already been installed to furnish approximately 400 horsepower, and will drive air compressor now being installed (capacity of 1,250 cubic feet free air per minute), and electric generator sufficient for lighting and electric energy needed for underground operations. Power house should be completed and ready for full operation to the above extent by July 1 to 15; operatives' houses have been built and others now under construction will be ready by August 1. The permanent drainage level has been driven approximately 150 feet into the vein and work is continuing 24 hours per day in this heading. Compressed air from small steam plant being utilized pending completion of the water power plant. Mine hoist for the present working shaft to be delivered by July 1; also mine cars and all other equipment necessary for full underground operations at such time as power plant is ready. Large magazine has been built and abundant supply of explosives provided and now on the ground to permit continuous operation for about 12 months. Thirteen miles of 60 pound steel rail have been purchased and are now on the ground at Gainesville ready to lay when the railroad grade is ready for them. Constructors' bids have been received for the railroad construction, promising completion of the

railroad, under bond, within 90 days after they are instructed to proceed.

The demand for lump pyrites becoming so acute for use in sulphuric acid fertilizer works in the neighborhood of Atlanta, it has been determined to push underground operations extensively in high-grade "ore shoots" to result in prompt delivery of as much tonnage as possible of this material without having to wait for the erection of concentration mill, which work will be carried on as follows:

The present drainage level having crosscut the vein exposing high grade lump ore from wall to wall about 46 feet wide shows, considered in connection with the tunnel and the 54° shaft above mentioned, high-grade ore shoot average width approximately 40 feet and extending along the vein about 400 feet. This level will be continued under the hill until sufficient "backs" are overhead, at which time it is anticipated that considerable tonnage of lump ores can be removed from this level. Simultaneously, drifts will be driven from the three compartment shaft 200 feet lower than this drainage level both to the northeast and to the southwest into or through this ore shoot of high-grade lump ore, at which time "stoping" operations will result in output of heavy tonnage of high-grade lump ore. Picking tables and ore bins are now being constructed and will be completed by August 1 to permit hand assortment of the lump ores for prompt shipment. The low-grade milling ores encountered will be deposited and dumped at convenient point for transportation to the concentration mill when same has been completed. It is anticipated that beginning August 1 as much as 150 tons per day of lump ore can be

delivered in the bins from the present openings ready for transportation.

Transportation.—Difficulties have been experienced in securing right of way for the railroad to Brookton, unless separate transportation company is incorporated to operate as common carrier. The owners have not felt that they could consistently incorporate as common carrier and run the risk incident to short-line railroad as such and are therefore now making other survey to Cleveland, on the Gainesville & Northwestern, to which point it is hoped private right of way will be secured. In the meantime, graded road has been built from the mines through the company's property and adjacent private property for a distance of about 2 miles to the Brookton-Dahlonega Road to facilitate transportation by motor truck and trailer equipment to the most available railroad station at Brookton. Large ore bins are now being built to facilitate delivery by motor truck and trailers and considerable tonnage is now ready for this means of transportation and larger regular tonnage above mentioned will be ready about August 1. Limited tonnages (about 50 tons per day) have been sold for delivery to begin August 1, and motor truck and trailer equipment has been purchased for delivery of this tonnage.

Quick deliveries and increased capacity.—The owners have not felt justified in development and exploitation of the Chestatee property beyond the extent above outlined even though the present pyrites situation would seem to warrant quick deliveries of heavier tonnages, for the following reasons:

First. Other developments in the domestic pyrites industry may bring about conditions of

competition after normal conditions have been restored, which would have disastrous effect, also resumption of heavy importations from Spain may so seriously affect the price that large output may not then be advisable notwithstanding the fact that the Chestatee property enjoys many natural advantages, as, for instance, water power, geographical position, etc., which would seem to insure continued profitable operation.

Second. Railroad transportation facilities necessary are seemingly now obtainable only on common-carrier basis and the owners are not willing to assume the risks incident thereto.

Third. The graded road already constructed by the owners must be continued and completed to Brookton to enable motor-truck deliveries of output until such time as railroad transportation is obtained. The owners do not feel justified in continuing this highway improvement without outside help and cooperation either from individuals, county, State, or Government aid.

Fourth. Supply of labor at prices which can be consistently paid is not available for the larger operations necessary for quick delivery and increased tonnage.

Proposed Government aid.—The owners are prepared to have available at the mines a minimum of 150 tons per day of lump ores, delivery to begin in August, and an equivalent amount of fines as soon thereafter as concentration mill can be erected. It is altogether probable that if additional labor can be made available that other entries can be made into the vein at other points to result in increased output perhaps to double these amounts.

If, however, this tonnage is to be made available for market to supply present urgent requirements, it will be necessary to secure Government aid or aid from other sources to the following extent:

AID OF GOVERNMENT NECESSARY

First. Working out of present highway from Chapman's store to Brookton to permit motor-truck and trailer transportation regardless of weather conditions.

Second. By exemption from conscription or by some other means render available larger supply of labor. About 150 men now at work; number should be increased to 300 on the property, exclusive of such number as may be necessary for highway improvement and railroad construction.

Third. Cooperation to secure railroad right of way.

Fourth. Cooperation of the Government with machinery and material manufacturers to secure prompt deliveries of additional machinery and materials required.

Fifth. Underwrite in some way the hazard or mining risk which now seems warranted on account of the urgent necessity of heavy tonnage of ore, but which would not seem to be justified under sound conservative business principles in normal times.

Suggestions.—It is suggested that the Government immediately take steps to aid the enterprise to the following extent:

First. Communication with machinery and material manufacturers, a list of which is hereto attached, urging prompt deliveries of machinery and materials not yet shipped.

Second. Notification of all the inhabitants in the neighborhood of the Chestatee mines and in adjacent sections where labor is available without interference with supply of labor of existing industries, that employees at the Chestatee mines and those willing to apply immediately for work will be exempted from conscription. (It is believed that this action will do more than any other one thing at this time to hasten the completion of construction work.) Laborers and carpenters are particularly needed.

Third. Some cooperation by such means as may be consistent with Government practices to secure right of way for railroad, in order to permit construction to begin immediately.

Fourth. Send such experts from the Geological Survey or Bureau of Mines or such other departments as may be deemed best to determine from personal investigation and inspection that the property and vein and the quality of ores are sufficient to warrant exploitation on large scale, and if found to be advisable render such aid as may then seem warranted.

Fifth. Send immediately Army engineers or others thoroughly familiar with rapid highway construction for determination of advisability, feasibility, and time necessary for improvement of highway to permit motor-truck transportation from mines to the present railroad station at Dawsonville. And what county, State, or [illegible] cooperation can be secured.

Respectfully submitted,

Geo. L. Pratt.

(Report 23-27.)

RESPONDENT CONSTRAINED TO BORROW MONEY

Geo. L. Pratt continuing:

"Returning to Atlanta after my conversation with Secretary Lane, I was informed by Mr. Ashcraft of the Ashcraft-Wilkinson Co., who had furnished us the $200,000, that Mr. Callaway had called on them, had shown them the blue prints and data sheets, etc., and the letter from Secretary Lane, and that Mr. Callaway had requested them—this is in the record in the shape of testimony by the various people whom I have mentioned—that he requested them to cooperate in an effort to increase our operations and get out increased tonnage.

"Accordingly, in the latter part of July, about a month after Mr. Callaway's visit, Mr. Ashcraft and his partner, Mr. Wilkinson, and four or five owners and representatives of the largest manufacturers of sulphuric acid in our section came to our mine and saw large tonnages of ore lying on the ground. Their plants were shut down, wanting it, and they could not get it from Spain. The big development in the sulphur situation had not been made, and every possible effort was made to get us to increase our operations. I still held out that the situation did not warrant it. I did not feel at my age that I was justified in jeopardizing everything that I had saved, and I was not willing to go ahead to greater extent. Finally, Mr. Ashcraft and Mr. Wilkinson seemed to get my brother to agree with them that it was the best thing to do. Later in July I very reluctantly—and the record will show—agreed to go into the thing to an enlarged extent. Accordingly, on the 14th day of August, nearly two months after Mr. Callaway had made the re-

quest, we decided to go into the thing to a greater extent and made a second financing contract with Ashcraft and Wilkinson." (Report 34.)

RESPONDENT'S MINE CONTAINED LARGE ORE DEPOSITS

"Mr. Rutledge had visited the property and, as I remember, that Mr. Julihn was the second engineer sent down. Mr. Julihn visited the property in November. He had handed to us a letter of introduction from Mr. Manning, of the Bureau of Mines, which, as I remember, recited that Mr. Julihn was making a trip through the South in an inspection of the several pyrites properties and prospects, and would call on us as one of the places that he intended to visit. He stayed about 10 days with us, and while there he made a very careful study of the property, the extent of it, the geological features, the peculiarities of the vein, etc., and made maps and sketches embodying his suggestions to our superintendent as to how we should proceed to make the maximum tonnage available in the shortest possible time. I want to state here that we followed, in so far as labor was available at that time to do so, the recommendations of Mr. Julihn in the development of the property to such an extent that up to the time of the signing of the armistice we had expended in underground development considerably over $100,000. The exact amount is in the record. Mr. Julihn wrote a preliminary report to Dr. Charles L. Parsons, Chief of the Division of Mineral Technology of the Bureau on Mines, on November 28. This preliminary report he prepared while he was at our property.

"MR. WELLING. That was 1917 or 1918?

"MR. PRATT. 1917. Now, I want to read from this report, it is short. I do not know that it is necessary to read it all but it is in the record and is available to you gentlemen. If you like, I will read the second paragraph:

" 'Arriving here as the first point of my itinerary I quickly realized that the possibilities of this mine must be much greater than those of any others I would visit and no estimation of it could be made in cursory fashion. It is an enterprise of enormous potentiality in a formative state, being attacked vigorously by capable men with adequate capital. The moderate development in the mine showed a large vein heavily and persistently mineralized. Using these showings as a tentative measure of possibilities beneath great extensions of undeveloped outcrop led to an inference of ore tonnages of such magnitude that I would not care to mention specific figures except in a careful report supported by data. The Chestatee unquestionably contains an immense tonnage of ore but it will require much skill to extract the part of it now in sight without retarding development necessary for the subsequent maintenance of production.'

"The balance of the preliminary report was chiefly mentioning the necessity for Government cooperation in securing deliveries, etc., and requests for priority service. The whole report is available if the committee would like to see it. Subsequently on December 6 he made a complete final report addressed to Dr. Charles L. Parsons on December 6, 1917, from which I quote as follows:

"'I have estimated Chestatee ore reserves as follows: 100,000 tons positive, 700,000 tons probable, 500,000 tons possible, 1,300,000 tons total. Extensions which cannot be estimated may show several times this amount.'

"Now, he goes on to discuss the situation as he found it with the suggestion as to what might be done, etc., in quite a lengthy report. I do not want to take the time to read it all but I do want to read the last paragraph:

"'Perhaps I should have reported that and hurried away.'

"He is referring to his previous statement in the report about the capacity.

"'I did not know what to do. I remembered your warning last summer to be reserved. But there was the vein with a great tonnage of pyrite, and the country needed it. The owners desired expert counsel and had paid a large fee to get it and had been ill advised.'

"He refers there to advice that we had received to begin shipments immediately of the large bodies in sight rather than proceed with development and bring larger tonnages into early production.

"THE CHAIRMAN. Was this engineer from the department?

"MR. PRATT. He was an engineer of the Bureau of Mines.

"THE CHAIRMAN. The other engineer that advised you about the shipment, was he from the department also, the one that gave you the advice that he said was ill advised?

"MR. PRATT. No, sir; that was an outside engineer that we had employed very much

earlier, in fact, before Government stimulation. He continues:

"'Of me, as an engineer of their Government, they expected much, and I answered the call and did what it was in me to do. I hope you will approve of my decision.'

"Shortly after Mr. Julihn returned to Washington the question, as I understand it, arose as to some means by which the Chestatee property might still be further developed. I want to read a few lines from the record of the hearings before the Minerals Relief Commission appointed by Secretary Lane. In connection with questions which were being asked me at the time as to whether Government promises had been made to us, Dr. Foster was asking me some questions. I had been informed by my brother of a conversation he had with Mr. Manning and I did not know whether the information given was confidential or not but it had considerable bearing on our case and I thought it was proper for it to come out in the hearings. Therefore when Dr. Foster asked if any promises or information had been given us that the Government would pay us, I had in mind bringing out that point. Dr. Foster asked the following question:

"'COMMISSIONER FOSTER. They told you of this bill which might extend it over a period of two years.

"'MR. PRATT. No, sir; not at that time. Secretary Lane, on the other hand, told me in conversation with him and Mr. Callaway here in June that there was no Government fund nor was there any authority for complying with the demands that I made in my report to Mr. Callaway that the Government should underwrite it or assist financially in the enter-

prise. It was subsequent to that that the agent, Mr. Julihn, represented to us that means were being worked out in Washington to protect such investments as we might make in the meantime.

"'THE CHAIRMAN. Did he say in what manner?

"'MR. PRATT. He said means were being worked out. I do not recall whether he said a bill was prepared or was being prepared. That was in the early part of December, 1917, but I have a distinct recollection that a bill was being discussed or that it was reasonable to suppose, from what was going on in Washington, for the protection and stimulation of such enterprises, that Congress would pass such an act similar to the other war measures they had passed for the protection and stimulation of such enterprise. I want to state here—but may I ask Mr. N. P. Pratt a question first?

"'THE CHAIRMAN. Certainly.

"'MR. PRATT. Would I be violating any confidence to repeat information you obtained from Mr. Manning as to a meeting at his house, particularly in regard to the Chestatee property?

"'MR. N. P. PRATT. I think you would.

"'MR. PRATT. Then I shall have to refrain.'

"Subsequent to the hearing before the commission Mr. Manning repeated the same statement to me in the presence of Mr. Edgar Watkins and Mr. Hall Wilkinson, and I therefore think I am at liberty to state to this committee what the statement was. Mr. Manning said that after Mr. Julihn returned he invited Secretary

Lane and two or three other gentlemen connected with the chemical industry, particularly, if I remember, a Mr. Nichols of the General Chemical Co., large manufacturers of sulphuric acid, to his house one evening, the object of the meeting being to discuss the matter of the Chestatee property and determine whether any funds were available or anything could be done whereby that property could be still largely developed to produce the tonnage needed. It appeared that there was no authority and no funds and therefore it was concluded that the best thing to do was to prepare and introduce in Congress a bill of some description to take care of the Chestatee property and other similar enterprises, Mr. Manning stating to me that therefore the Chestatee situation was largely responsible for the war minerals bill which was subsequently passed to take care of such enterprises. I did not feel that I could give such confidential information as this before the commission but Dr. Manning speaking freely of it afterwards, I feel now that I am at liberty to do so. When (before) the armistice was signed the war minerals bill which I have mentioned was introduced in the House, and if you gentlemen will remember, it was passed rather promptly. It went to the Senate and was amended and lingered for many months and was finally passed, I think on October 2, (5) 1918." (Report 35-38.)

After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the Amendment to the War Minerals Act. This report criticised severely the former Committee for its illiberal treatment of claimants, and

Findings of Committee

"The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the Act and the application of the provisions of the law to the facts."

The report then copied portions of the Act of March 2, 1919 and said:

"The language of the act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim. For the correct rule of interpretation and application of such a statute see *United States v. Dixon* (15 *Peters*), *United States v. Union Pacific Railroad Co.* (91 *U. S.*), *United States v. State of New York* (160 *U. S.*), *Smith v. Townsend* (140 *U. S.*), *District of Columbia v. Washington Market Co.* (108 *U. S.*), *McClure v. United States* (115 *U. S.*), *Monongahela Navigation Co. v. United States* (148 *U. S.*), *Stewart v. Kahn* (78 *U. S.*). For the reasons above stated the committee has not thought it necessary to amend the original act."

The wording given by the committee of the House not being heeded by the Secretary of the Interior, and [illegible] continuing its narrow construction of the law, Congress again took the matter under consideration and passed an Act approved November 23, 1921, as follows:

Act of November 23, 1921

(Public—No. 99—67th Congress)

(S. 843)

"AN ACT to amend section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes.'

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' be, and the same is hereby, amended as follows:

"Add to the first paragraph of section 5 the following proviso: '*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said act.

"'If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or

through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.'

"Approved November 23, 1921."

Suits in Court

After the passage of the Act of November 23, 1921, relator, and others claiming losses because of the purchase of property, believing that the Congress had indicated an intention for more liberal terms, again appealed for an allowance to the Secretary of the Interior. Later this was denied and in order to test the question, Respondent in 1923 filed in the Supreme Court of the District a petition for a writ of mandamus. That Court held that the writ should issue and said:

OPINION OF THE SUPREME COURT OF THE DISTRICT

"Hearing on demurrer to respondent's answer to petition for mandamus.

"The petition prays:

"That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and to make award therefor.'

"The answer of the respondent avers that the Secretary of the Interior:

" 'On September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.'

"The demurrer to this answer raises practically a single question of law, which is stated in point two of the demurrer as follows:

" 'The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the Acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress.'

"In the court's opinion the question, in principle, has been settled by rulings of the appellate tribunals, controlling upon this court, and which require that the demurrer be sustained:

"*Secretary of the Interior v. U. S. ex. rel. Logan Rives, No.* 4020, ...*App. D. C.*...., decided January 7, 1924.

"*Seaboard Air Line Railway Co., et al. v. U. S., No.* 407, Oct. term, 1922, U. S. Supreme Court; decided March 5, 1923.

"U. S. v. State of N. Y., 160 U. S. 598.

"Demurrer sustained.

"F. L. Siddons, Justice.

"January 8, 1924."

(Record former appeal of this case in this court.)

While this decision stood, and on February 21, 1924, but little more than a month after the decision, the Secretary of the Interior sent a communication to the Chairman of the appropriate Committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia in another case, the Rives case, and also discussed the Chestatee Pyrites & Chemical Company case, wherein was involved expenditures made for the use of borrowed money. The Secretary then proceeded to show that of the $8,500,000 originally appropriated and allowed for claims that would be awarded for items other than the purchase of property and interest on borrowed money, there would remain only the sum of $389,337.38, and the Secretary said:

Letter from Secretary of Interior

"Experience has shown that about 30 per cent of the total amount of all the claims filed has been found to be the actual net losses sustained and payable under the War Minerals Act, and if this approximate per cent shall obtain in the settlement of the remaining 200 claims, aggregating $[illegible]76.36, and if all the 248 claims in which no motion for rehearing has yet been filed, involving $1,906,061.57, should be resur-

received (but attention is again called to the fact that $9,062,867.50 claimed for losses on purchase of property, $206,320.00 claimed for losses for mineral rights purchased, and $20.00 claimed for interest paid on borrowed [illegible] of these items of $3,722,788.54 are not [illegible] in the aggregate of $4,495,267.50 upon which the calculation of 90 per cent is made), there will remain of the appropriation $999,387.50 to meet:

(a) $5,062,867.50 claimed for losses on purchase of property;

(b) $206,320.00 for interest paid on borrowed capital;

(c) $453,608.54 for purchase of mineral rights;

(d) Costs of administration;

(e) The probability or possibility of other items not allowed in the past being brought into the problems for adjustment, liquidation, and settlement under the act by litigation just as property losses and interest losses have been brought in. For illustration, if the manufacturers of ferro-manganese should enter mandamus proceedings, regardless of the opinion of the Attorney General, and the courts should hold that such losses are legitimate items for repayment, then claims involving more than half a million dollars, which in these figures have been disregarded, would have to be included with those entitled to consideration and adjustment.

"And if none of the 248 claims in which no motion for rehearing has been made should be revived, there would remain of the appropria-

tion to meet the $3,722,796.84 claimed for purchase of property, mining rights, and interest, $961,746.85, making no allowance for cost of administration."

The Secretary concluded his statement by saying:

"This communication is being sent to the Chairmen of the Appropriation Committees of the Senate and House and to the Chairmen of the Mines and Mining Committees of both branches of Congress.

"Will you not confer and give me a reply at your earliest convenience?

"Very truly yours,

(Signed) "HUBERT WORK."

Act of June 7, 1924, and Its Purpose

The Supreme Court of the District of Columbia and the Court of Appeals of the District having decided that interest paid and contracted to be paid was an allowable item, the Secretary of the Interior, Mr. Work, having notified Congress that the appropriation was inadequate if such item and the item for the purchase of property were allowed, the Congress, on June 7, 1924, struck the limitation of $8,500,000 from the Act of 1919 and left in force the original appropriation of $50,000,000.

The Act reads:

"(Public—No. 249—68th Congress) (S. 2797)

"An act to authorize the payment of claims under the provisions of the so-called war minerals relief act.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals act entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

"Approved June 7, 1924."

While it is true that this Court held in *Work v. Chestatee Corp.*, 267 *U. S.* 185, decided May 2, 1925, that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia had no jurisdiction and therefore reversed such courts, the fact that Congress, with a knowledge that if the decisions of the District Courts stood more money would need to be appropriated, made such an additional appropriation shows that Congress acquiesced in the decisions of the Supreme Court of the District of Columbia and of the Court of Appeals.

The Secretary of the Interior must have regarded the matter in a similar light, for he wrote to the Attorney General for guidance thereon. The Attorney General wrote as follows:

"22113 (Copy—M)

Respectfully referred to the
DEPARTMENT OF THE INTERIOR
for information and guidance.
Chief Clerk.
Department of Justice
Washington
March 23, 1928.

"Sir: I have the honor to acknowledge the receipt of your letters of December 9, 1927, February 25, 1928, and March 9, 1928, in which you request my opinion on the following questions arising in the administration of Section 5 of the Act of March 2, 1919, c. 94, 40 Stat. 1272, 1274, commonly known as the War Minerals Relief Statute:

"'*First.* Are you authorized to adjust, liquidate and pay net losses sustained in the purchase of real estate?

"'*Second.* Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or payable under obligations to pay, on money borrowed for use by operators in connection with operations under the law?

"In your letter of March 9, 1928, you state that claims of such character have been filed with you for adjustment, allowance and settlement under the Act; that in your administration of the Act you have held that claims of such character are not within the purview of

the statute and for that purpose have declined to consider them with a view to an adjustment, that some of the claimants and members of Congress who are giving consideration to the passage of legislation having for its purpose the enlargement of the scope of those statutes to embrace such claims, have urgently appealed before you urging that the construction of the law which has heretofore been followed is erroneous, and that if correctly interpreted claims of the character mentioned should be reopened and adjusted without further legislation; that you have refused upon their application to recede from the construction adopted or to reconsider such cases with a view to adjustment of losses arising from the classes of claims covered by the questions submitted to me, and you now desire my opinion on the two questions of law.

"Section 5 of the Act provides:

"'That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, * * * by reason of producing or preparing to produce, either manganese, * * * or tungsten in compliance with the request or demand of the Department of the Interior, * * * to supply the urgent needs of the Nation in the prosecution of the war; * * *

"'The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided;

"'* * * *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder

and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith *for or upon property* which contained either manganese, * * * or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese * * * or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, * * * from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded * * *.

* * * * *

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States:

Provided further, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government in the manner aforesaid.'".

(We here omit the portion of this opinion which relates to Docket 66 in this court.)

"The Supreme Court has held that the Secretary's construction of the Act in both respects was within the discretion permitted by the statute. *Work v. Rives*, 267 *U. S.* 175; *Work v. Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

"The history of the administration of the Act contained in the papers submitted with your letters shows that all claims under consideration by you were filed within 90 days after the passage of the Act; that your predecessors in office so construed the Act as to reject both classes of claims, and that that construction has been consistently maintained by you and that all claims filed within the statutory period have been acted upon in accordance with this construction. It further appears that the questions are presented at this time under application to reopen cases thus disposed of. It also appears that the arguments now advanced were then considered and the construction contended for by the claimants rejected.

"Prior to the amendment of November 23, 1921, c. 137, 42 Stat. 322, and during the con-

sideration of the Amendatory Act, Congress was, under a resolution of the Senate of January 19, 1921, advised of the construction of the law adopted and followed by your predecessors. Thereafter the two amendatory acts were passed, neither of which contains language which upon any reasonable theory can be held to overrule or modify the meaning of the original act as thus construed. Of the amendment of November 23, 1921, the Supreme Court has said, 267 U. S. 180:

> "'This amendment was brought about on the recommendation of the Secretary of the Interior, because he had felt obliged under Section 5 as it was to reject some 600 claims for failure within the time limit to show a direct personal request or demand upon the claimant by the government authorities named in the Act and a response thereto by the claimant and because the Comptroller had refused to pay any changed award of the Secretary made after a rehearing or to correct miscalculation.'

"The amendment of June 7, 1924, c. 327, 43 Stat. 634, merely removed the limitation imposed by the Act on the amount to be disbursed in payment of claims. Thus, though Congress has twice amended this section of the Act by liberalizing its provisions in favor of claimants, nevertheless it has not seen fit to amend it so as to make it clearly include claims for losses of the kind covered by your question, though the Departmental construction rejecting such claims was distinctly brought to its attention.

"Under such circumstances and *irrespective of the reasons upon which the construction first adopted and consistently adhered to was based, or of what my own opinion might be if it were a*

case of first impression, and passing over the traditionally grave questions of propriety and power which always arise when the head of an executive department undertakes to review and overrule decisions deliberately made by one of his predecessors (compare 2 Ops. A. G. 8; 18 Ops. 33, 387; 15 Ops. 208), I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. I agree fully with the conclusion reached by the Solicitor of your Department that 'you would not be justified, without further legislation authorizing the inclusion of the items referred to, in considering either of them as a proper basis for an award.'

Respectfully,

(Sgd.) JNO. G. SARGENT,
Attorney General."

The Honorable,
The Secretary of the Interior.

It may fairly be implied from the language above, which we here emphasize, that if the learned Attorney General had followed his "own opinion"; or if the grave question of "propriety and power" of one Secretary to reverse his predecessor had not existed, his conclusion would have been different. Certainly the full and accurate legislative history was not considered. (See opinion of Assistant Secretary Edwards. Post. 51.)

Petitioner Agreed that Legislation Authorizing Suits was Proper

Hearings were had before the passage of the Act of February 13, 1929, the relevant parts of which we insert.

EXCERPTS FROM HEARINGS

before the

COMMITTEE ON MINES AND MINING HOUSE OF REPRESENTATIVES

Seventieth Congress

Second Session

on

H. R. 15861.

Wednesday, January 23, 1929.

AMENDING THE WAR MINERALS ACT

House of Representatives

Committee on Mines and Mining.

Wednesday, January 23, 1929.

The committee met at 10:30 o'clock A. M., the Hon. John M. Robsion (chairman) presiding.

THE CHAIRMAN. The committee will come to order. This hearing is directed to H. R. 15861, introduced by Mr. Vinson, of Georgia (Report, p. 1).

(The bill was then copied.)

The Act later passed and approved February 13, 1929, was read and copied in the report.

STATEMENT OF EDWARD C. FINNEY, FIRST ASSISTANT SECRETARY OF THE INTERIOR

* * *

MR. FINNEY. The policy of the department with respect to this, as to all other cases received in the Department of the Interior is this, that the decision of the Secretary of the Interior on the facts should be final. Where the decision of the Secretary involves a construction of law, it is our policy, and the attitude of the Secretary of the Interior, Assistant Secretary Edwards and myself, and Mr. Briar, too, that we have not the slightest objection in the world to that question of law being carried into the courts and determined by the courts. After such determination, of course, it becomes our duty to carry out the law as construed by the courts, so answering specifically your questions, we prepared a proposed report to the committee expressing that view.

This bill proposes to permit questions of law arising out of the war minerals legislation, and which are in dispute, to be carried into the courts for determination, and our proposed report was to the effect that we favored it. (Report 3.)

* * *

THE CHAIRMAN. How much? Suppose the courts should hold that interest and the purchase of property came within the Act, how much, roughly, would that involve?

MR. FINNEY. It would only be an estimate. As you people know, there were 1,268 claims filed. Of course some of these claims have been adjusted, and

I assume there is no further dispute on those. Some of the claims have been disallowed. Not all of the claims, of course, involve interest or the *purchase* of property. Some of them may involve some other questions of law. We made a rough estimate some time ago that interest and purchase of property, if allowed, might involve between two and three millions of dollars. That was just an estimate. (Report 8.)

* * *

MR. VINSON. It is a fact, is it not, that the Department of the Interior looks with favor upon the enactment of legislation of this character, that would give the claimants a right to have the legal question determined by the courts?

MR. FINNEY. That was our attitude before we received the communication from the Bureau of the Budget. After having received that communication, we have to bow to it, and the matter is now up to Congress.

MR. VINSON. Then the Department of the Interior would like, would it not, to see Congress submit the question of law, and nothing but the question of law, to the courts for determination, so that the Department of the Interior can conclude from that decision whether or not they have administered the law in accordance with what the law is?

MR. FINNEY. As I stated a moment ago, that is our general attitude on questions of law. We would be very glad to have this or any other questions of law arising in our adjudication of cases, settled by the courts of competent jurisdiction.

MR. VINSON. As Assistant Secretary of the Interior, your viewpoint, as that official, is favorable to the enactment of this legislation and to the purport of this bill?

MR. FINNEY. Yes.

THE CHAIRMAN. It may be put this way; that the Department of the Interior is not opposed.

MR. VINSON. Yes.

THE CHAIRMAN. I mean, they do not invite litigation. I don't think any department should be put in the attitude that they invite litigation.

MR. FINNEY. That is a very good suggestion.

MR. VINSON. And I will adopt it. The Department of the Interior, then, is not opposed to the enactment of this measure?

MR. FINNEY. No. (Report 4.)

* * *

MR. FINNEY. Let me put it in another way. The courts, as I understand it, did not go into the merits; they passed on the technical question as to whether the courts of the District of Columbia, if you please, had the right to review the decisions of the Secretary of the Interior.

THE CHAIRMAN. And right there we find ourselves, in this particular instance, in a little different situation than we generally find, because there is an express provision of the Act keeping folks from going to the courts, forbidding them from going to court. In nearly every other instance they have that right to go to court.

MR. FINNEY. Yes. As I said, Mr. Chairman, in most other cases they have a method of getting in, either through an injunction or request for mandamus. (Report 6.)

* * *

MR. FINNEY. In this way: This bill, as I understand, provides that the decision of the Secretary of the Interior on facts shall still be the final conclusion.

MR. VINSON. And it is not enlarged.

MR. FINNEY. But in any question of law which has arisen or may arise in these cases, whether it shall be one or a hundred of them, the claimants shall have the right to institute a proceeding in the court to get a judicial interpretation of that particular question.

THE CHAIRMAN. Merely to get a construction on the law, and after that is had, if it is adverse to the present ruling of the Secretary of the Interior, then the cases will be adjudicated with that view of the law. (Report 6.)

* * *

MR. MANLOVE. I just want to give a concrete case. One of my constituents expended $15,000 for land, which is absolutely worthless other than for the purpose of mining and producing manganese ore. He put nine hundred and some dollars in equipment. The representatives of the Government allowed him the $900, but they refused to allow him anything on account of the real claim he had, the $15,000 which he had invested in the land. That man wouldn't have the opportunity, under this decision, because prob-

ably the question of law does not enter into it, to have his claim reviewed, as to whether or not he should be repaid the $15,000 for the land.

MR. FINNEY. If I understand your statement, that is a question involving the purchase of property, which is one of the questions we have decided adversely to the claimants. We have said, in substance, 'You still have that property, and we are not authorized, under this law, as we construe it, to reimburse what you have paid.' The claimants say that is wrong. They say, 'We bought this property for what it was worth for manganese or some other mineral. After the war it didn't pay to mine the property and it was of no use and it was a loss.' (Report 7.)

* * *

THE CHAIRMAN. As I understand this, I don't see the use of more than one case going through the courts, because you are merely going to construe the law. Then it will be up to the department to adjudicate the cases according to the law laid down by the courts.

MR. GREENWOOD. Probably they would take the strongest case, go to the court and get an adjudication of that.

THE CHAIRMAN. You don't need even the strongest case. The question of facts is not going to enter into this. They are going to read the law, and perhaps read the proceedings had in Congress, to know what was the intent and purpose and scope of that act as provided by the Congress. They will then merely construe it.

MR. GREENWOOD. But every law suit is based upon . . .

THE CHAIRMAN. You are assuming that the court is going into the facts. I don't understand that to be the purpose of this bill.

MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.

THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace *interest* or *capital cost*, cost for the *purchase of property*.

MR. VINSON. Interest and capital invested.

THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.

MR. VINSON. As a matter of law.

THE CHAIRMAN. As a matter of law. Not on anybody's case, or anybody's facts. (Report 9.)

* * *

MR. FINNEY. Let me explain a little further. Also let me preface that, Mr. Chairman, by saying that as I understand this bill, it is broader than you have outlined. You have touched upon two questions only, the purchase of property, the capital investment, and interest. This bill would also permit other questions of law to be carried into the courts. There may be some cases that involve some other question of law beside those two. Now, as to your question. In the case to which you refer, and I don't know which case it is—

MR. MANLOVE. We will just use it as a hypothetical case for the purpose of illustration.

MR. FINNEY. That man expended $15,000, which he said was expended in buying a piece of ground which is now worthless, and which he intended to use as a mine?

MR. MANLOVE. Yes.

MR. FINNEY. After the war he says the land became absolutely worthless, and it resulted in a loss to him.

MR. MANLOVE. That will be admitted.

MR. FINNEY. A loss of the $15,000 invested. This bill would permit him, or one in a like situation, to go into court and determine whether the Secretary of the Interior is right when he construes the law to say that kind of a claim is not payable under the War Minerals Act. If the court said that it was payable, that a capital investment of that amount was repayable under the War Minerals Act, then the Secretary of the Interior would be set right on the law, and he would have to carry it out and administer it. Then he goes back to the facts in that man's case. Did he pay $15,000, or did he pay $13,000? Is the land worth today $5,000, or is it worth nothing? (Report 9, 10.)

* * *

STATEMENT OF JOHN H. EDWARDS, ASSISTANT SECRETARY OF THE INTERIOR. (Report 10)

* * *

MR. EDWARDS. The Interior Department is willing at all times for all questions of law to be determined by the courts. If the Department of the Interior has misconstrued an Act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an Act. Those differences are never settled until some court settles them. That is the attitude of the department on this proposed bill, and all other laws, and I may say that is borne out in the administration of the War Minerals Act by the frequent requests made for a construction of the Act by the Solicitor of the Interior Department on the several questions submitted to the Attorney General, and we always, in the administration of an Act, follow the legal advisers.

MR. HARE. I gather, then, from your statement, Judge, that the department has not only no objection to this legislation, but in order that the situation might be clarified the department would welcome such legislation to interpret these Acts with reference to this mineral Act?

MR. EDWARDS. Your view is my view exactly. The Congress said by this Act that the Secretary of the Interior was the sole and exclusive judge of the law and the facts. I mean the present law. Now, if the Department of the Interior has misconstrued the

present law, then we have denied to claimants that which they are rightfully entitled to have under a proper construction. (Report 11.)

* * * * *

MR. SPROUL. But the point I am asking about is this: Hasn't there been dissatisfaction on the part of the claimants over the amount of money determined to have been their losses, independent of questions of law?

MR. EDWARDS. There has been dissatisfaction, I think, however, not so pronounced, over the settlement on the facts. There always will be. A claimant says, "I am entitled to $100,000." The department goes into the facts and says, "No, you are entitled to $50,000." Of course, he is dissatisfied, but I think in the vast majority of cases the claimants have recognized the fact that they have been fairly treated on the facts.

MR. SPROUL. What per cent of the claims contain these law controversies?

MR, EDWARDS. All claims that contain an item of *loss on property*, all claims that include the *item of interest*. (Report 12.)

* * *

MR. EDWARDS. Of course, the War Minerals Act goes back to the spring of 1919, and that was before I was connected with the department, but the Attorney General has passed on a great number of these questions, and I think perhaps all of the major questions, except the loss of property and interest, and he did pass upon that, in a way. I think he did not go into the merits of it, however.

MR. SPROUL. Did he confirm your attitude?

MR. EDWARDS. Yes; in a decision that did not go into the merits of it. That was very late. In fact, the administration was virtually closed when that question was submitted to the Attorney General, and it was submitted after a conference of Senators and Representatives with the Secretary of the Interior. (Report 13.)

* * *

MR. MANLOVE. Whether any one of the three of you would have any feeling whatever upon the question of the courts passing upon your decision in the matter.

MR. EDWARDS. Absolutely not. We are perfectly willing. In fact, if you would ask me my preference in the matter, I would state to you that I would prefer to have the opinion of the courts. Then I would know that I had not, through some interpretation placed upon it by me or followed by me, done anybody an injustice.

MR. MANLOVE. And if you have, you would be anxious and willing to have the matter properly adjudicated?

MR. EDWARDS. Absolutely.

MR. VINSON. And the opinion of the court would be in final settlement of this matter for all time to come?

MR. EDWARDS. There is no question about it, because it would remove from the realm of controversy and doubt that question. The Interior Depart-

ment as well as the claimants would have to accept that as a finality. (Report 14.)

Act of February 13, 1929

This Court having decided that the Secretary of the Interior had a discretion as to questions of law that could not be controlled by the courts, the Congress again evidenced its desire to see payment made to claimants, and on February 13, 1929, there was approved an Act taking from the Secretary his discretion as to questions of law.

The Act reads:

"(Public—No. 728—70th Congress) (S. 1347)

"An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Act (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

"Sec. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

"Sec. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

"Sec. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

"Approved, February 13, 1929."

The Congress in Effect Approves Respondent's Claim

If an answer were needed to the suggestion of Attorney General Sargent that "Congress has by acquiescence sanctioned and adopted your (the Secretary's) construction as a correct interpretation of its intent," this Act furnishes it. For by this Act,

Congress unmistakably repudiates the action of the Secretary on all questions of law. If Congress had been willing to sanction and adopt the construction theretofore placed by the Secretary, it would have done nothing. There would have been no occasion to act.

The Committee on Mines and Mining said:

> "The language of the Act * * * is clear and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out. * * * For the reasons above stated the committee has not thought it necessary to amend the original Act." (Ante 28.)

Our conclusion is inevitable, particularly when we consider the question above and the situation as presented to Congress at that time.

After the War Minerals Act was passed in 1919, and the Commission appointed by the Secretary began to administer it, it early became apparent that there was a sharp dispute under the law as to whether losses suffered for interest paid on borrowed money and obligations incurred were reimbursable under the Act. In 1921 when Congress acted to extend the relief to others than those personally solicited, this question had not yet been presented either to the Congress or to the courts, and there was no reason for Congress to act. By 1924, however, both the Supreme Court and the Court of Appeals of the District of Columbia had decided the question in favor of this claimant. Congress did not then act in any way so as to disapprove of such result; in fact,

it impliedly approved it by voting to remove the limitation on the appropriation available to meet such claims. This was the Act of 1924. Then this court decided in May, 1925, that under the law as it then stood the courts could not review the decisions of the Secretary upon either questions of law or questions of fact. The result of this decision was to deny relief to such claimants, although the line of reasoning announced by the highest court which had attempted to pass upon the merits of the question was favorable to such claimants in every respect.

It was then for the first time that Congress was under compulsion to act if it wished to preserve the relief rights of these claimants. Up to this time (1925) Congress had relied upon the courts to construe the law in harmony with the intent of Congress, and the lower courts had done so. Then in 1925 this court pointed out that the courts lacked jurisdiction to decide these questions in any way. The effect was to leave the decision of the Secretary as final, regardless of whether it was right or wrong. In this situation, if the conclusion of the Secretary had been satisfactory to Congress, it could have remained silent. But if the practical result reached was unsatisfactory—if its will had been thwarted—one would expect it to act.

Congress acted. It passed this Act of 1929. By doing so, it said, in effect, "Mr. Secretary, you have not construed our Act correctly on these two points of law. Your decisions on issues of fact are satisfactory, and we will not change the substantive wording of the original Act lest it unsettle the whole matter of relief and invite the filing now of stale claims.

When these legal questions were thought to be before the courts, they read our intent correctly. Therefore, we are going to take the decision of these legal questions out of your hands and leave it to the courts, which have already indicated a correct interpretation of our intent."

These facts surrounding the passage of this Act of 1929 show it clearly to have been the intent of Congress to have the courts and not the Secretary pass finally on these disputed questions of law.

But if we leave such outside matters and look into what was said on the floor of Congress when this Act of 1929 was under discussion, our construction is even more definitely confirmed.

The Act of February 13, 1929, was originally introduced in the Senate as S. 1347. This bill provided that the Court of Claims should be the tribunal to pass on these questions of law. In the House, at the same time, had been introduced a bill, H. R. 15861, which had practically the same provisions as the Senate bill, but it provided that the claimants could go to the regular courts. When the Senate bill reached the House, it was referred to the Committee on Mines and Mining, which reported it out after striking out all after the enacting clause and inserting, as the body of the bill, H. R. 15861.

Report of the House Committee

Mr. Robsion, Chairman of the Committee, in reporting the bill, said (Congr. Rec., Feb. 4, 1929, p. 2800):

"In 1919 Congress passed what is known as the war minerals act. It set aside $8,500,000 to take care of losses in the production of certain minerals during the war. This act gave the Secretary of the Interior entire jurisdiction in hearing and determining both questions of law and questions of fact. Some 1,200 claims have been filed and these have been adjudicated. There remains unexpended nearly $1,000,000.

"There has been much complaint on the part of the various claimants to the effect that the Secretary of the Interior has not properly construed the law. There has been very little objection on the questions of fact.

"All this bill does is simply to give the claimants the right to go to the district court, the court of appeals, and the Supreme Court on the questions of law alone. The action of the Secretary of the Interior under this bill, on questions of fact, is still final and conclusive.

"So it is up to the House to say whether or not we want to give these claimants the right to go to the courts to have a construction of the law. If the courts construe the law as the Secretary of the Interior construed it, there will be no expenditure; but on the other hand, if the contention as to the law in two important particulars is overturned, it may cost the Government as much as $3,000,000, according to the report of the Secretary of the Interior. We already have something like a million dollars."

A little later, in response to a question as to whether this Act did not enlarge the number of claimants, Mr. Wingo said:

"As a matter of fact, all this bill does is to authorize the court to determine a disputed

question of law that has arisen in the department, and about which the department itself is in doubt as to what the law is."

Followed by Mr. Robsion again:

"This does not enlarge the act. It does not permit any new claims to be filed. It is merely an authorization for the courts to construe the act, and the Secretary of the Interior will administer it in accordance with the construction by the courts."

Then the following colloquy took place:

"MR. ROBSION of Kentucky. Mr. Speaker, the Secretary of the Interior has ruled that this act does not provide for the repayment of money expended for the purchase of property to produce these minerals. It does not provide for the payment of interest where men borrowed money to go into these mining ventures. The only question now that this bill will open up when the law is construed is: Does the law authorize repayment for the purchase of property or the payment of interest that was borrowed to go into these mining operations?

"MR. DYER. Suppose the law does state that, suppose the Supreme Court decided that way, then, of course, if the claims are opened up and allowed, some of these dubious or large claims referred to will, if allowed, necessitate the appropriation of more money than has been appropriated by the Congress.

"MR. ROBSION of Kentucky. According to the report of the Secretary of the Interior, if these two items are allowed under the law, it will not mean more than $3,000,000, and there is today about $1,000,000 of the unexpended appropriation that would be applied. The Secretary

says it might cost not more than a million and a half.

"MR. UNDERHILL. Mr. Speaker, will the gentleman yield?

"MR. ROBSION of Kentucky. Yes.

"MR. UNDERHILL. Is it not a fact that the decision of the Secretary of the Interior is based largely upon the assumption that these ventures were largely speculative, and that he did not believe that the Government should attempt to repay these men for money expended or chanced during the war, for the sake of profits?

"MR. ROBSION of Kentucky. That is not his view. He just held that the law does not permit the refund of money paid to buy mineral lands out of which was to be mined these minerals, and that he is not authorized to pay interest on money borrowed to go into this business."

The bill thereupon passed the House, and on February 6, 1929, after a discussion which likewise made it clear that the purpose of the Act was to have the courts pass on the questions of law, the Senate agreed to concur in the House amendment.

Thus when Congress passed this latest Act, that of 1929, it was its express intention to take away from the Secretary his discretion to decide that under the law claimants who paid and agreed to pay interest could not recover, and to leave the decision of this question to the courts. In view of the fact that previous decisions of the courts had been favorable to the claimants on this question and that the decisions of the Secretary had been unfavorable, the only possible conclusion is that Congress disapproved of the

Secretary's decisions and wanted those of the courts to be reinstated as controlling. If Congress had amended the War Minerals Act expressly to provide for the recovery of such claims, its intent would not have been more apparent.

SUPREME COURT OF THE UNITED STATES.

Nos. 66 and 67.—October Term, 1931.

Ray Lyman Wilbur, as Secretary of the Interior, Petitioner, 66 *vs.* The United States of America, ex rel. The Vindicator Consolidated Gold Mining Company. Ray Lyman Wilbur, as Secretary of the Interior, Petitioner, 67 *vs.* The United States of America, ex rel., Chestatee Pyrites & Chemical Corporation.	On Writs of Certiorari to the Court of Appeals of the District of Columbia.

[December 7, 1931.]

Mr. Justice Butler delivered the opinion of the Court.

No. 66

May 31, 1919, the relator under § 5 of the Act of March 2 of that year, 40 Stat. 1272, known as the War Minerals Relief Act, filed with the Secretary of the Interior a claim for net losses alleged to have been suffered by reason of producing or preparing to produce chrome in compliance with the request of the Secretary. The claim included an item of $16,259 asserted to be a net loss by reason of the expenditure of that amount for the purchase of land upon which the mine was located. Relator still holds the title. May 15, 1928, the Secretary held that under the Act he was not authorized to adjust or pay losses by reason of expenditures for the purchase of property, and on that ground denied any award on account of that item.

In *Work* v. *River* (1925), 267 U. S. 175, we held that the Act made the Secretary's decisions conclusive. But Congress, by the Act of February 13, 1929, 45 Stat. 1166, authorized the Supreme

Court of the District of Columbia to review the final decision of the Secretary upon any question of law which had arisen or might thereafter arise in the adjustment of such claims, expressly leaving his decisions on questions of fact conclusive.

February 18, 1929, relator sued for a writ of mandamus directing the Secretary to take jurisdiction and to adjust and pay relator its net losses suffered by reason of the purchase of such property. The court held the Secretary rightly decided the question of law and dismissed the petition. The Court of Appeals, following its earlier decision in *Work* v. *United States*, 295 Fed. 225 (reversed here on the ground that under the Act of 1919 the Secretary's construction was not subject to review) held the Secretary erred in law and reversed the judgment. 47 F. (2d) 422. This court granted a writ of certiorari. 283 U. S. 817.

The question for decision is: To what extent, if at all, does the statute empower the Secretary in respect of net loss incurred by relator by reason of its expenditure for such land?

During the World War certain mineral substances and products including chrome became essential to the nation's defense. The need having become very great, Congress by the Act of October 5, 1918, 40 Stat. 1009, declared a large number of such materials to be necessaries, empowered the President, through such agencies as he should designate, to acquire and distribute the same and also to requisition, develop and operate lands, mines and plants capable of producing them, and appropriated $50,000,000 to carry out the purpose of the statute. The Armistice, November 11, 1918, ended the emergency.

By § 5 of the Relief Act the Secretary is empowered "to adjust . . . and pay such net losses as have been suffered by any person . . . by reason of producing or preparing to produce either, manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war . . .". And the section limits the authority of the Secretary to such "adjustments and payments in each case as he shall determine to be just and equitable". It requires that all disbursements shall be made out of

funds appropriated by the Act of 1918, and shall not exceed $3,500,000. A proviso declares that no claim shall be allowed or paid unless it shall appear to the satisfaction of the Secretary that the expenditures so made were made in good faith "for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance".

The Act of November 23, 1921, 42 Stat. 322, amends and broadens § 5 of the Relief Act by adding to its first paragraph a provision that "all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in" the Act of October 5, 1918[1], "in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act". And by the Act of June 7, 1924, 43 Stat. 634, the limitation of the aggregate amount to be disbursed under the Act of 1919 was repealed.

Section 5, the proviso referring to expenditures "for or upon property" containing the minerals, and the amendment of 1921 are plainly broad enough to include net losses resulting by reason of expenditures for the purchase of property and leaves no room to doubt that it was the purpose of Congress to empower the Secretary to take them into account in arriving at the amount, if any, to be allowed and paid.

The petitioner argues that the phrase "such net losses as have been suffered" excludes claims where, at the time of the enactment, the purchaser still retained title to the property. But the net losses mentioned are not thus limited. Losses by reason of expenditures for property, real or personal, still owned by claimants are not excepted. The purpose is merely to reimburse; loss

[1] ". . . officer or officers, department or departments, board or boards, agent, agents, or agencies as he [the President] shall create or designate from time to time." See § 6, 40 Stat. 1011.

resulting from speculative investments is excluded; allowance of profits is forbidden. In determining actual net loss the value of the property purchased and retained by claimant is necessarily to be taken into account. The construction for which petitioner contends necessarily rests upon the hypothesis that one may not suffer loss by reason of expenditures for land while he continues to own it. No such assumption can be entertained for it is everywhere known that the contrary is true, and that the value of lands and plants purchased and constructed to produce minerals and other things needed wholly or principally to carry on the war was liable to, and in fact generally did, greatly and permanently decline when the struggle ended. And, in support of his contention, petitioner invokes history of the legislation, but that is not here permissible for the language and meaning of the statute in respect of the question under consideration are clear. *United States* v. *Missouri Pacific R. R. Co.*, 278 U. S. 269, 278.

The conclusion is plain. The Secretary is required to proceed to ascertain whether relator, on March 2, 1919, had incurred net loss by reason of the expenditure of $16,259 for such land; and, if he shall find that relator has suffered such a loss, then the Secretary, having regard to the safeguards and limitations specified in the statute, shall determine how much, if any, of the net loss so found the relator is "in justice and equity entitled to from the appropriation in said Act."

No. 67

March 5, 1919, relator filed with the Secretary of the Interior a claim for losses by reason of expenditures for the production of pyrites under the conditions specified in § 5. The claim included items of interest on money borrowed, so expended and lost by relator. The Secretary and his successors including petitioner have uniformly held that the statute prohibits any award on account of such interest and have disallowed all claims therefor. After the passage of the Act of 1929, relator brought this suit for mandamus to compel the Secretary to take jurisdiction and allow such interest.[2]

[2] An earlier application for mandamus was granted by the Supreme Court. The Court of Appeals affirmed. 298 Fed. 839. But this court reversed (267 U. S. 185) following its contemporaneous decision in Work v. Rives, 267 U. S. 175.

The court held the Secretary rightly construed the statute and dismissed the petition, the Court of Appeals reversed, 47 F (2d) 424, and we granted a writ of certiorari, 283 U. S. 817.

The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date. It constitutes a part of relator's expenditures and cost of the undertaking and so is within the terms of the section as amended. *United States* v. *New York*, 160 U. S. 598, 621-624. But the mere fact that such interest was lost does not entitle relator to have, or warrant the Secretary in allowing, any part of it. It must be shown clearly that such interest was paid or the obligation incurred by relator at the instance of one of the specified governmental agencies. And the Secretary, upon a consideration of all the circumstances and with due regard to the provisions of the section as amended, must be satisfied, and determine as a matter of fact, that an allowance on account of such interest is just and equitable and that the loss is one for which relator in justice and equity is entitled to be reimbursed from the appropriation.

As we sustain the construction placed upon the statutes by the Court of Appeals, the cases will be remanded to the Supreme Court of the District of Columbia with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as here construed. Subject to this direction the judgment of the Court of Appeals in each case is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.